



# **JULIE LASSA**

## **STATE SENATOR**

**Testimony on Senate Bill 468**  
Thursday, February 18, 2010  
Senate Committee on Education  
State Capitol, Room 412 E

Chairman Lehman and members of the Senate Committee on Education,

Thank you for holding a public hearing today on Senate Bill 468. This legislation will give guidance to educators on how to safely and effectively manage difficult student behavior, give information to parents on how schools deal with student behavior challenges, and will track how and when restraints and timeouts are being used in Wisconsin schools. Current seclusion and restraint practice doesn't properly support teachers, protect students or notify parents, and this bill will help fix that.

Parents send their children to school with the expectation that they will be safe. Most reports we've received from advocacy groups about the use of seclusion and restraint are from parents of our most vulnerable children: kids with autism, bipolar disorder, ADHD, anxiety or depression. Many of these parents didn't know that their children were being restrained or put in seclusion rooms – rooms that are locked from the outside - until a concerned school employee informed them about what was going on, or until parents began asking questions after noticing unexplained physical injuries or a change in their child's behavior. This is wrong. Parents have a right to know what is happening to their child in school.

There are currently 20 states that have either statutory language or administrative rules governing the way that schools implement seclusion and restraint. Wisconsin is not one of them. In fact, reports of death and abuse from the use of seclusion and restraint of students are so widespread that the U.S. Government Accountability Office recently conducted a review of these methods in public and private schools across the country. Its findings were troubling. The GAO's examination of school documents police and autopsy reports and interviews with parents, attorneys, and school officials revealed documented cases where students were pinned to the floor for hours at a time, handcuffed, locked in closets and subjected to other acts of violence, some of which resulted in death. As a result, the GAO advises that all states implement regulations and reporting procedures for every facility that uses or has the potential to use restraint and seclusion techniques.

Wisconsin has no statute or administrative regulations regarding seclusion and restraint in schools. The only policy in Wisconsin that attempts to provide guidance to educators on seclusion and restraint is an outdated and ineffective directive by the Department of Public Instruction that does not have the force of law behind it. The directive states that seclusion and restraint should only be used as a last resort when a student's behavior is an immediate danger to the student and when other interventions have been unsuccessful. I think you will hear today that both seclusion and restraint are often used, not as a last resort, but as a first response. Additionally, you will hear that the directive requires staff training on the appropriate application of restraint, as well as training on how to de-escalate problematic behaviors in students. This training is not an annual requirement for all school staff. It also does not require training for the use of seclusion. Unfortunately, it is inexperienced professionals that often engage in the most restrictive seclusion and restraint. The directive does not require debriefing after the incident, nor does it require parental notification. No



guidance is given as to who has the authority to decide about seclusion and restraint, and there is no requirement to collect data or to submit reports to district administrators or DPI.

You will also hear from opponents of this bill today that this legislation will restrict teachers and be administratively cumbersome. You will hear that it is paperwork intensive. I would argue that schools are already submitting paperwork when behaviors spiral out of control and the police are called, either because staff or students were injured. Additionally, you're going to hear that the federal government is looking into this issue and we should wait for them to act. I would argue that Wisconsin should not wait for the federal government to protect our children. Prompted by the Government Accountability Office report and a congressional hearing, the Department of Education promised to have an accounting of laws, regulations, policies and guidelines currently in place in each state on the department's Web site by February 12<sup>th</sup>. To date, that promise has not been kept.

Professionals once considered seclusion and restraint therapeutically useful. This is antiquated methodology. Seclusion and restraint have actually been shown to exacerbate difficult behaviors and do nothing to teach a child appropriate behaviors. In fact, the literature on seclusion and restraint shows the psychological harm suffered by children who experience it. These children have nightmares, intrusive thoughts, avoidant responses and mistrust, even five years after the incident. No adult should ever inflict such harm on a child. A risk management guide for behavioral health states that "each use of restraint or seclusion poses an inherent danger, both physical and psychological, to the individual who is subject to the interventions and frequently, [and] to the staff who administer them." The *American Journal of Orthopsychiatry* states that 50-81% of seclusion or restraint episodes happen to children who experience them repeatedly, demonstrating that the practice does not change behavior. In the *Journal of Applied Behavior Analysis*, researchers reported that in a series of classroom observations, physical restraint applied in direct response to specific problem behavior only increased the rates of those behaviors. There are better ways to address the needs of children with behavioral problems. There is a growing consensus that the use of Positive Behavioral Intervention and Supports, or PBIS, is an effective way to prevent problem behaviors that are currently leading to the use of seclusion and restraint. Senate Bill 468 requires that at least one staff member in each school be trained in PBIS.

As we developed this legislation, we struggled to find consensus among the various stakeholders involved. My office began meeting with the groups that I'm sure you will be hearing from today regarding this bill in the fall of 2009. One of these meetings was arranged by the Department of Public Instruction, which sought out an independent mediator to facilitate the discussion. Despite this attempt at mediation, this effort failed. The groups we met with did not bring anything meaningful to the discussion. This inability to find common ground suggests to me that it is absolutely necessary for the legislature to step in and provide guidance on how timeouts and restraint are used in our schools.

I have attached to my testimony a copy of a Legislative Council memo on the legislation which describes the bill in detail. It includes a requirement that staff be trained on how to appropriately and safely de-escalate challenging student behaviors before they start, how to safely use a restraint hold on a child, and how to place a child on a timeout. The bill includes a procedure to notify parents when restraints or timeouts are used on their child. Finally, the bill also requires schools to report to DPI when seclusion and restraint are used.

I look forward to continuing to work with Representative Pasch, committee members and key stakeholders to come to a common ground on how to resolve this issue and ensure that our schools are safe for everyone, both students and staff. However, if key stakeholders continue to refuse to come to the table with meaningful solutions, the legislature should move forward with this bill. It is our charge to ensure that the citizens of our state are safe, especially in our schools.





# SANDY PASCH

## STATE REPRESENTATIVE

### Senate Bill 468 Testimony of Representative Sandy Pasch Senate Committee on Education February 18, 2010

Good morning, Mr. Chairman and committee members. As the lead Assembly author of Senate Bill 468, I thank you for allowing me to testify before you today in favor of this proposal.

Earlier this week, the State Assembly took action to strengthen the punishment of adults who cause reckless harm to children. We made the punishment harsher for adults who harm children, recognizing that children are more vulnerable and deserve special protection.

Children are special. But they may also be frustrating at times. They may exhibit behaviors that are annoying, or possibly disruptive, and sometimes, even dangerous. It is important for teachers and school personnel to understand these behaviors and know the best ways to intervene, using methods that are safe, effective, and evidence-based.

Unfortunately, children regularly and needlessly suffer from harmful practices in a misguided attempt to manage "challenging behaviors." This is wrong for all involved – the child exhibiting the behavior, the teacher expected to manage the behavior, and the students who witness the intervention. Wisconsin parents and teachers have been raising concerns about the use of restraint and seclusion in schools for many years. These reports reveal that restraint and seclusion are harming children's academic progress and, perhaps even more disturbing, causing serious physical and emotional harm.

I have spoken to teachers. Teachers have described feeling inadequately trained to deal with inappropriate behavior, which has led some of them to restrain students – without proper training. One teacher poignantly told me of her concern, adding that too many of her colleagues do not know the difference between a child who *won't* versus a child who *can't*. Today, you will hear from parents the stories of the physical injuries and emotional trauma their children have experienced due to restraint and seclusion. For example, a 9 year-old boy attempted suicide after being secluded. A 16 year-old boy's elbow was broken in multiple places during a restraint. Most tragically, a 7 year-old girl died when she was improperly restrained. A joint report by Disability Rights Wisconsin, Wisconsin FACETS, and Wisconsin Family Ties—titled *Out of Darkness...Into the Light: New Approaches to Reducing the Use of Seclusion and Restraint with Wisconsin Children*—draws attention to the damaging effects of seclusion and restraint. It outlines the tragic cases of children who have been subject to these practices and calls for action to enact policy that addresses the dangerous practice of seclusion and restraint.

Senate Bill 468 would facilitate the use of Positive Behavioral Interventions and Supports (PBIS) as a safer and more effective alternative to seclusion and restraint. The bill also restricts dangerous practices in restraining and secluding students, sets standards for training, and requires documentation of incidents and reporting to parents and the Department of Public Instruction.



This is consistent with recommendations from U.S Education Secretary Arne Duncan, who, in a letter dated July 31, 2009, urges each state to review and revise its current policies regarding seclusion and restraint to ensure that *every* student is safe and protected. Secretary Duncan praised the policies of his home state of Illinois which prohibit the use of seclusion or restraint for the purpose of punishment or exclusion, and allows trained staff to restrain students only in narrow circumstances. Illinois allows the use of isolated time out or physical restraint only in situations when it is absolutely necessary to preserve the safety of self or others; includes rules that must be followed when these techniques are used; and requires documentation of each incident to be provided to parents within 24 hours. Secretary Duncan also encourages the use of Positive Behavioral Intervention and Supports (PBIS). As noted, this bill includes those recommendations.

Our state must address outdated or nonexistent measures that fail to adequately address the health and educational outcomes of our children. Momentum behind the effort to address this issue is growing across the nation, as at least 20 states have addressed the use of seclusion and physical restraint in statutes or administrative regulations. Further, in light of the death and abuse of students from the use of seclusion and restraint, the U.S. Government Accountability Office recently conducted a review of the use of these methods in public and private schools across the country. The appendix – at the end of the report – is entitled the *Summary of State Laws Related to the Use of Restraints and Seclusions in Public and Private Schools*. Wisconsin is listed as having none. We have no laws to protect a child from being subjected to the abusive and potentially deadly use of seclusion or restraint in a school.

With adequate training, teachers and care providers can appropriately understand and respond to behaviors in ways that are **safe, effective, humane, and evidence-based**. Senator Lassa and I look forward to continue working with a broad coalition of stakeholders to ensure the well-being of both our most vulnerable citizens and our teachers, making our schools safer with better academic outcomes.

I appreciate your consideration of this important issue facing schools, teachers, and children across our state.





**Senate Committee on Education  
February 18, 2010**

**Department of Public Instruction  
Testimony on 2009 Senate Bill 468**

Thank you to Chairperson Lehman and members of the committee for the opportunity to testify before you today for information on Senate Bill 468 (SB 468). My name is Jennifer Kammerud. I am the Legislative Liaison for the Department of Public Instruction (DPI) and with me today is Marge Resan, School Administration Consultant for the Special Education Team at DPI.

SB 468 would apply to all school-age children. It regulates the use of aversive interventions in schools, such as timeouts and physical restraints. It also relates to the use of positive behavioral interventions and supports and provides procedures for the review of the use of timeouts and physical restraints.

The State Superintendent of Public Instruction believes that school districts should provide training for school staff, provide notice to parents, log incidents and report the use of seclusion and restraint for all school-age children. These requirements are already in place for special education students, which make up 12.48 percent of Wisconsin's school-age population, through the *Directives for the Appropriate Use of Seclusion and Restraint in Special Education*. The department issued the directives in 2005 and holds local educational agencies accountable for compliance with its requirements. Requirements include:

1. Seclusion or physical restraint may be used only as a last resort in emergencies, when there is immediate threat of danger to the student and/or others.
2. Seclusion or restraint may be used only until safety concerns are no longer present, and may not be prolonged beyond what is required for maintaining safety.
3. The use of seclusion or restraint must be documented in the student's Individualized Education Program (IEP) when the IEP team can reasonably anticipate its use may be necessary. In situations where seclusion or restraint is first used without prior indication, an IEP team meeting should be held as soon as possible so the team can address its use.
4. Constant adult supervision must be maintained while either technique is used.
5. Written procedures or policies on the use of seclusion and restraint must be developed.
6. Logs or incident reports must be maintained.
7. Data on the use of seclusion or restraint must be reviewed and evaluated.
8. School building codes apply to any area or room used for seclusion.
9. School staff using these techniques must have information and training in their safe and appropriate use.

In the past five years, the department has investigated 22 situations where inappropriate use of seclusion or restraint was alleged. When we have found violations, they range from failure to

log the use of seclusion or restraint or failure to notify parents to insufficient staff training and inappropriate use of seclusion and restraint.

When we find violations, the department imposes vigorous corrective action, both child-specific as well as district-wide so violations do not recur. We have required, for instance, such corrective actions as shutting down a seclusion room, taking away devices used inappropriately for restraint, requiring training for staff, reconvening IEP teams, development of behavioral intervention plans, program reviews, and establishment of logging and oversight systems. Our experience has been that school districts treat this important issue very seriously and respond appropriately.

Physical restraint is sometimes necessary to ensure the safety of students and staff in crisis situations, and the department supports the need for training in its appropriate use. Currently school districts obtain training through many different venues at significant expense, often through contracts with private companies who specialize in crisis intervention training. These private companies have developed and employ differing approaches and techniques.

In addition, the department supports a statewide initiative to bring Positive Behavioral Interventions and Supports (PBIS) training and technical assistance to the state. The goals of PBIS are to increase academic performance, improve safety, decrease problem behavior, and establish a positive school culture for all children.

Schools implementing PBIS see dramatic reductions in disciplinary interventions and increases in academic achievement. Currently, \$260,000 of federal funding supports this work. Such training, however, takes years to accomplish and is expensive. For PBIS, or any other training system, to be implemented in every school, funding must be available.

Parents should be notified of the potential use of seclusion or restraint, both prospectively through the child's individualized education plan (IEP) and, for all students, following an occurrence of its use. The timelines and content of parental notification need to be considered so there is a reasonable balance between a school staff's capacity and parents' rights.

The department supports a requirement to maintain a log documenting the use of seclusion or restraint for all students so their use may be evaluated and to allow their use to be reported. On this last point, you should know that the United States Department of Education, Office of Civil Rights, is nearing completion of revising its regular data collection procedure to include reporting of incidents of seclusion and restraint.

As you also undoubtedly are aware, federal legislation governing the use of seclusion and restraint has been introduced, both in the House and the Senate. Wisconsin would be required to conform to federal legislation.

Thank you for the opportunity to speak before you today. We would be happy to answer any questions you may have.

**TESTIMONY IN FAVOR OF SB 468**

by

Jeffrey Spitzer-Resnick  
Managing Attorney

As many of you know, Disability Rights Wisconsin (DRW) is Wisconsin's protection and advocacy agency for people with disabilities. In that role, DRW has both state and federal statutory authority to investigate allegations of abuse and neglect of people with disabilities in Wisconsin, and to take steps to prevent and remedy such abuse and neglect. One of the many areas that DRW provides advocacy is in Wisconsin's schools. As Managing Attorney for DRW's Schools & Civil Rights Team, I spend most of my time advocating for children with disabilities who need special education.

For more than 10 years, DRW has received dozens of complaints regarding the inappropriate use of seclusion and restraint in Wisconsin schools. Many of these cases have been truly horrific, including children locked in unsafe rooms with holes in the wall and insulation coming out, for so long that they were urinating and defecating in those rooms. In some cases, DRW was able to provide representation for the victims of these inappropriate practices, and achieve many good things, including dismissals and resignations of teachers and administrators, closure of unsafe seclusion rooms, training for staff on the use of Positive Behavior Interventions & Support (PBIS), and six figure financial settlements. The cases in which DRW has been involved were so horrific that school districts have uniformly been wise to settle these cases out of court.

At one level, you may think that DRW has done its job by providing effective representation to victims of inappropriate seclusion and restraint. However, DRW's success in this arena has been limited to after the fact remedies that will never heal the emotional and physical scars that victims of these inappropriate practices have suffered. Thus, about 10 years ago, DRW began seeking legislation to prevent these inappropriate practices in our schools. Despite introduction of prior measures on this issue, remarkably, this is the first time which the legislature has held a public hearing on this topic. For this, we thank Senator Lehman, and the rest of the committee members.

When DRW first proposed legislation in this area, there were only six states which had laws regulating seclusion and restraint in schools. However, since this has emerged as a national problem, there are now 20 states which have statutes or regulations regarding seclusion and restraint in schools. Indeed, as you may have heard, there is now federal legislation pending in this area.

There are a number of reasons why legislation in this area has not moved forward until now. First, because there is no state or federal requirement to track the usage of seclusion and restraint in schools, many questioned how often these horrific practices occurred. In order to address this problem, DRW joined with two other statewide nonprofit agencies, Wisconsin FACETS, and Wisconsin Family Ties, to research and publish the report which you have all previously received, and which we have provided you with an Executive Summary, today, *Out of Darkness...Into the Light: New Approaches to Reducing the Use of Seclusion and Restraint with Wisconsin Children*. While this report does not pretend to reveal an accurate number of instances of seclusion and restraint in Wisconsin's schools, it does tell the stories of more than 2 dozen children who have been inappropriately secluded and restrained. You will hear more about their (and others) stories from some of their parents and even some of the victims later in this hearing.

Another reason we wrote this report was to provide policy makers and the public with high quality research on the issue of how to handle challenging behavior and what role seclusion and restraint have in controlling such behavior. *Out of Darkness* reveals two very important things in this regard. First, **seclusion and restraint are ineffective techniques in controlling challenging behavior**. Numerous studies have shown, that when health care facilities, including inpatient mental health institutions, were **required by federal and state laws to reduce or eliminate seclusion and restraint, patients and staff had fewer injuries and fewer instances of challenging behavior**. The reason for this is simple. When Congress and state legislatures responded to the abusive use of seclusion and restraint in the inpatient health care arena in the 1980s, although those institutions expressed the same fears that educators are expressing regarding SB 468, they realized that they had to **treat the behavior instead of attempting to control it**. Virtually all health care providers now acknowledge that seclusion and restraint is not treatment. Similarly, seclusion and restraint have no educational value, and simply do not belong in our schools, in all but the most exceptional circumstances.

Later in this hearing you will hear from highly respected educators who will explain that the use of seclusion and restraint in schools makes behavior worse, not better, and risks serious injury to both students and staff. But, you may ask, what should schools do about challenging behavior if they can only use seclusion and restraint in limited circumstances? Fortunately, SB 468, backed up by research, and the educators you will hear from later today, has the answer. PBIS is a proven effective school wide response to improve behavior in schools. It works regardless of the type of school, rich or poor, academically successful or challenged, and regardless of whether the students have disabilities or not. Best of all, implementation of PBIS in Wisconsin schools will not only reduce challenging behavior, it has been proven to raise academic performance of students in schools which use it.

The final reason it has taken so long to have this issue aired publicly, is that although we have made every effort to come to a consensus with other education stakeholders on this issue, quite simply, they have simply stated that they do not want legislation in this area, and have worked hard to defeat efforts to have legislation to promote PBIS and to reduce the use of seclusion and

restraint and make it safer. We are well aware that we will hear arguments from them today about how passage of this bill would make schools unsafe and necessitate calling the police more often. To that, we have two responses. First, all available research demonstrates that passage of this bill will make schools safer, and improve academic performance. If you hear otherwise from other witnesses, please ask them for the research that backs up their claims.

Second, SB 468 was crafted by selecting the best elements of the 20 states' legislative and regulatory provisions, and combining them into a "best of the best" bill. However, we acknowledge that there can be multiple legislative approaches to this issue and we welcome all constructive ideas about how to make SB 468 an even better bill. We have always welcomed this input, and we continue to be willing to meet with anyone and everyone who may have constructive ideas on how to improve this bill.

Finally, in focusing on the many provisions of this bill, we certainly hope that this committee will not lose sight of the fact that there are a number of essential elements that we are hard pressed to understand why anyone would oppose. Those elements are as follows:

1. No child should be locked in a room. It is a violation of fire codes.
2. Any room in which a child is secluded or kept in a timeout, should meet basic standards of safety.
3. No child should be secluded or kept in a timeout, in a room without their parents having an opportunity to see the room.
4. Any staff member who uses restraints on a child should be trained on how to use such restraints, as without that training, the staff member risks injury to him or herself as well as the student.
5. Any restraint that restricts breathing should never be used.
6. School staff should keep track of their use of seclusion, timeout and restraint and report that to DPI.
7. After seclusion, timeout, and/or restraints are used, school staff should meet with each other as well as the child's parents and the child to determine how to reduce challenging behaviors with that child in the future so that seclusion, timeout, and/or restraints will no longer be necessary.

If other educational stakeholders have ideas that would enhance Wisconsin's schools ability to achieve these common sense elements listed above, we welcome discussion on those ideas. It is our hope that after this hearing, all stakeholders on this issue can agree on a common legislative approach to present to you as a friendly amendment. However, if other stakeholders continue to resist coming to such agreement, then we urge you to pass SB 468 as currently drafted.

Thank you for your attention to this critical issue. I welcome any questions which you may have.



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Parents send their children to school with the expectation that they will be safe. Most reports we've received from advocacy groups about the use of seclusion and restraint are from parents of our most vulnerable children: kids with autism, bipolar disorder, ADHD, anxiety or depression. Many of these parents didn't know that their children were being restrained or put in seclusion rooms – rooms that are locked from the outside - until a concerned school employee informed them about what was going on, or until parents began asking questions after noticing unexplained physical injuries or a change in their child's behavior. This is wrong. Parents have a right to know what is happening to their child in school.

There are currently 20 states that have either statutory language or administrative rules governing the way that schools implement seclusion and restraint. Wisconsin is not one of them. In fact, reports of death and abuse from the use of seclusion and restraint of students are so widespread that the U.S. Government Accountability Office recently conducted a review of these methods in public and private schools across the country. Its findings were troubling. The GAO's examination of school documents police and autopsy reports and interviews with parents, attorneys, and school officials revealed documented cases where students were pinned to the floor for hours at a time, handcuffed, locked in closets and subjected to other acts of violence, some of which resulted in death. As a result, the GAO advises that all states implement regulations and reporting procedures for every facility that uses or has the potential to use restraint and seclusion techniques.

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As we developed this legislation, we struggled to find consensus among the various stakeholders involved. My office began meeting with the groups that I'm sure you will be hearing from today regarding this bill in the fall of 2009. One of these meetings was arranged by the Department of Public Instruction, which sought out an independent mediator to facilitate the discussion. Despite this attempt at mediation, this effort failed. The groups we met with did not bring anything meaningful to the discussion. This inability to find common ground suggests to me that it is absolutely necessary for the legislature to step in and provide guidance on how timeouts and restraint are used in our schools.

I have attached to my testimony a copy of a Legislative Council memo on the legislation which describes the bill in detail. It includes a requirement that staff be trained on how to appropriately and safely de-escalate challenging student behaviors before they start, how to safely use a restraint hold on a child, and how to place a child on a timeout. The bill includes a procedure to notify parents when restraints or timeouts are used on their child. Finally, the bill also requires schools to report to DPI when seclusion and restraint are used.

I look forward to continuing to work with Representative Pasch, committee members and key stakeholders to come to a common ground on how to resolve this issue and ensure that our schools are safe for everyone, both students and staff. However, if key stakeholders continue to refuse to come to the table with meaningful solutions, the legislature should move forward with this bill. It is our charge to ensure that the citizens of our state are safe, especially in our schools.



Most often, kids presenting with challenging behavior are kids with disabilities. My son has a mental health disorder and is on the autism spectrum.

Throughout his early elementary years, my son was regularly restrained, secluded and locked in a time out room. This method of behavioral management made Donovan's mental illness worse.

At age 7 in one particular seclusion incident, he was confined to the time out room for an entire day alone. The plan was to keep him in the time out room until he demonstrated he wouldn't get angry anymore. This seclusion plan was written for an entire week.

Donovan didn't make it through the first day. He became psychotic and ended up in the hospital. No one asked me, no one told me about the plan until after it happened.

It took months for him to recover enough to function at all. In many aspects, he has not recovered 9 years after the incidents.

My son has the right to his feelings. Instead, he was continually punished for his inability to express himself appropriately caused by his language delays, anxiety and mood disorder.

When school stopped using adverse consequences and began working with Donovan proactively, he became successful in school both behaviorally and academically.

Now I work with kids like Donovan in public schools, I know the direct ~~the~~ benefits of teaching positive strategies. I experience our students' successes as a result.

Kids with disabilities presenting with challenging behaviors don't have the ability to regulate themselves for a variety of reasons.



It's our obligation to teach students positive coping skills so they can be successful in school, in life and go on to live to their fullest potential, realizing their hopes and dreams just like 'typical' kids. We have an obligation to help our students achieve that.

Unfortunately our kids aren't always afforded those opportunities, regular use of restraint & seclusion occurs every day as punitive punishment.

Positive Behavioral Intervention & Support is not rocket science. It's a paradigm shift in our adult view of behavior; asking ourselves WHY is it happening, vs. focusing on the WHAT of the challenging behavior. When we get curious, when we view the world through the eyes of the child, the positive solutions are usually very clear.

SB 468 regulating the use of seclusion and restraint is necessary to protect our kids, to require that paradigm shift in thinking about why challenging behavior is occurring, requiring us to provide positive strategies and instruction. We prepare the student for life, we teach to the skill deficit, just as we teach academics.

What are we teaching our kids when we seclude and restrain them? We're teaching them that the bigger human has the upper hand, that power and control is a means to gain compliance..... how is that serving our children?

With SB 468, parents are required to be informed, schools required to collect and report data on the use of Seclusion & Restraint and to utilize positive behavioral interventions and supports.

SB 468 will require public schools to teach our kids appropriate coping strategies and help them achieve success. That is the purpose of school, to teach our kids to be productive members of society.

Most importantly, SB 468 allows Seclusion and Restraint to only be used when there's an imminent risk of safety, *NOT* for 'non-compliance', 'refusal to work' or as a punitive punishment.



There are state and federal regulations for the use of Seclusion & Restraint in hospitals, residential centers, group homes, foster homes, nursing homes and even in Prisons.

There is no such protection for our most vulnerable population, students with disabilities, attending public schools in WI.

Using seclusion & restraint with our kids as a means to control or punish is traumatizing & psychologically damaging, yet it continues to occur every single day without just cause. The impact on our kids lasts forever. The traumatic impact incurred irreparable. Going to school isn't supposed to hurt.

Respectfully submitted on February 18, 2010

Paula Buege

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Middleton, WI 53562



A lot of really bad things happened to me in school.

No one was helping me.

Restraining me, holding me down and locking me in the calming room all the time only made me worse.

That did a lot of psychological damage.

It's hard for me to trust people now.

Educators need to be taught how to work with kids like me.  
Kids like me need SB 468.

Respectfully submitted February 18, 2010  
Donovan Richards, Jr  
5218 Shorecrest Dr  
Middleton, WI 53562





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# WISCONSIN EDUCATION ASSOCIATION COUNCIL

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Affiliated with the National Education Association

*Great Schools  
benefit  
Everyone!*

**Testimony of Mary Bell**  
**President of the Wisconsin Education Association Council**  
**Before the Senate Education Committee**  
**Senate Bill 468**  
**February 18, 2010**

Good morning. My name is Mary Bell. I am a library media specialist and English teacher currently serving as President of the Wisconsin Education Association Council, the largest union of education employees in the state. WEAC's 98,000 members represent a diverse group of teachers and education support professionals. Thank you for the opportunity to speak to you today about SB 468.

It is of utmost importance to Wisconsin educators that students are physically and emotionally safe at school. We support a reasonable approach to ensuring that safe environment – for children as well as school staff. For that reason, we oppose SB 468.

Current law allows school personnel to use reasonable and necessary contact to maintain an orderly and positive learning environment and defers to the judgment of school personnel in exercising that right. Although the proposed legislation keeps that language in statute, it would severely restrict an educator's ability to exercise that judgment. This bill prohibits or puts so many conditions on the use of restraint, seclusion, and even time-outs, that school employees will fear violating the law, which may make them reluctant to intervene.

If restraint is necessary, an educator could intervene only in an emergency under this legislation. We have many questions around this provision. What constitutes an emergency? Is it when a situation is escalating, where using contact to guide a student away from the triggering event could prevent a violent outburst? Or is it an emergency only after harm has been inflicted? The bill defines time-out as separating a student from class and into an enclosed setting or isolated area. Can a teacher no longer send a student to the principal's office if the student then sits in a separate room? The bill does not allow an educator to threaten or even warn a child that he may get a time-out. Can I no longer say, "Johnny, if you don't stop shooting spitballs, you'll need to take a time-out?"

This legislation was drafted without input from educators. The extreme limitations on the use of reasonable restraint appear to be modeled after rules that are applied in hospital and residential treatment settings. However, the public school setting is very different from a hospital setting. A hospital setting is designed to provide treatment and therapy individually or in a small group. Public schools are designed to provide academic skills mostly in large group settings. As a result, schools have a much higher student to staff ratio compared with the number of patients seen at one time by a health care worker. Given this high ratio, it is unlikely that you will have two people who are

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certified to use restraint and seclusion present at the moment of crisis in a school, a requirement of SB 468. If only one certified person were available, wouldn't you want that staff person to restrain a child who poses a clear and present danger to himself or others? In crisis situations, educators need to make decisions in a split second. Because of all of the conditions placed on the use of restraint in this bill, educators may hesitate to intervene as the emergency unfolds.

What about the need to prevent a child from running away from the playground? What about removing a student from standing on a table or climbing bookshelves? This legislation severely hampers educators' abilities to appropriately respond even where safety is an issue.

But there's a bigger issue here that this legislation completely ignores. As more and more residential and clinical treatment centers are closed, more and more students with severe behavioral disabilities are entering our schools. Just this month, Winnebago Mental Health Institute and Mendota Mental Health Institutes consolidated and reduced child and adolescent beds. The children's census at Winnebago went from 65 children one year ago to 28. As these children returned to the community and began attending public schools, the specialized resources and staff that were available in these children's treatment facilities didn't follow them into their schools. And even if they did, it is unlikely these children's extensive treatment needs could be met in a school setting.

If we truly want to address these children's needs, we would ensure that wrap-around services, including mental health treatment, were available to all children. The lack of alternatives to provide appropriate services addressing the various behavioral needs of children is a fundamental issue that this legislation ignores. We would welcome the opportunity to work on the underlying problem of inadequate services for children whose behavioral needs interfere with their learning and that of others.

School district employees take safety very seriously. They are responsible for the safety of all children in their classrooms, on the playground, in the lunchroom, and during after-school activities. Educators must have the tools to ensure a safe and positive school environment.

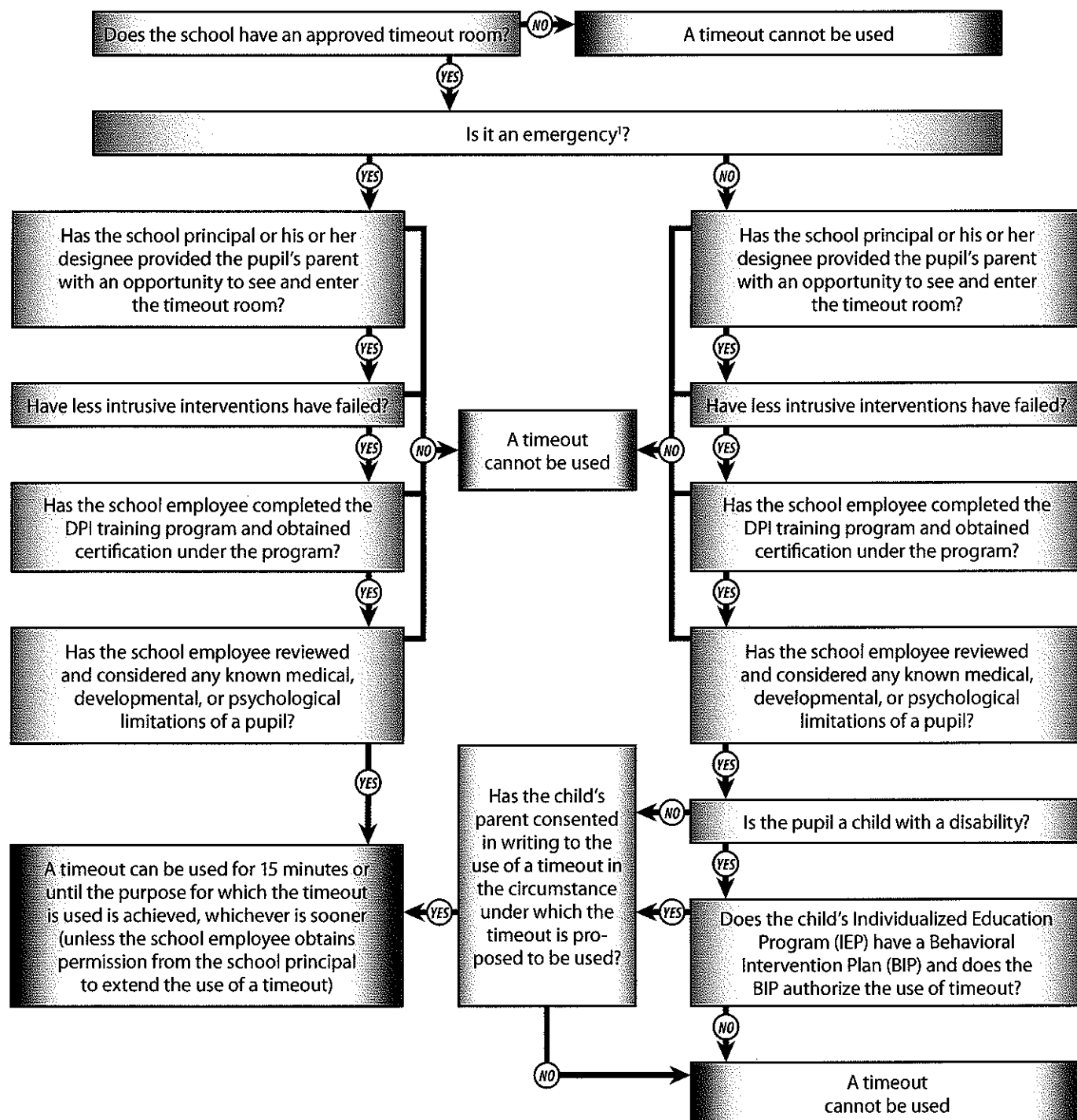
For all of these reasons, please oppose SB 468.

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## Can a timeout be used?



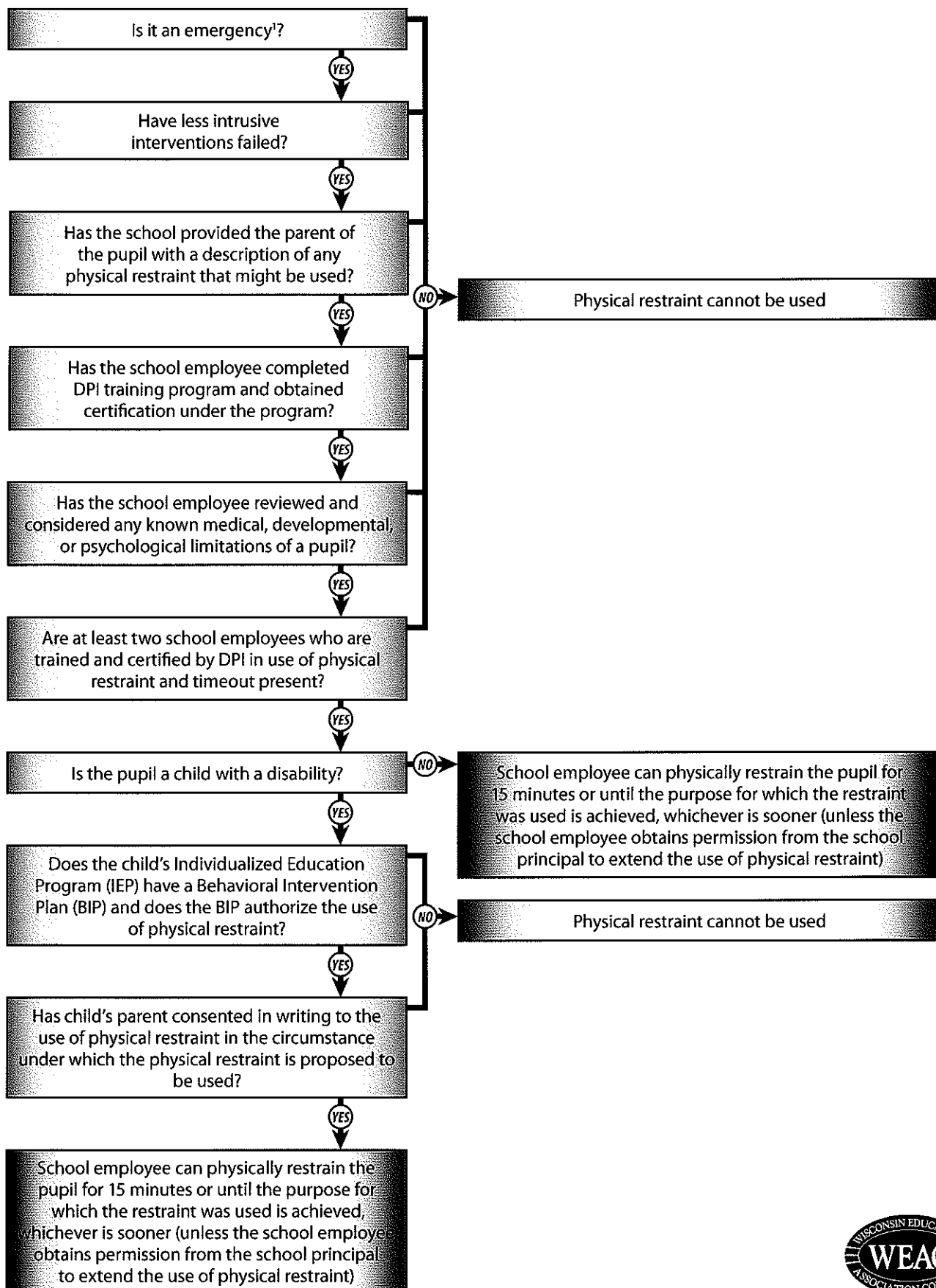
<sup>1</sup>"Emergency" means a situation in which it is necessary to control a pupil's spontaneous or unpredictable behavior when that behavior poses a clear and present danger of serious physical harm to the pupil or to others and cannot be immediately controlled by a less restrictive technique. "Emergency" does not include a situation in which a pupil uses profanity or threatens physical harm to himself or herself or others unless the pupil demonstrates a means of carrying out the threat.



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## Can physical restraint be used?



<sup>1</sup>"Emergency" means a situation in which it is necessary to control a pupil's spontaneous or unpredictable behavior when that behavior poses a clear and present danger of serious physical harm to the pupil or to others and cannot be immediately controlled by a less restrictive technique. "Emergency" does not include a situation in which a pupil uses profanity or threatens physical harm to himself or herself or others unless the pupil demonstrates a means of carrying out the threat.



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*Testimony of Mary Draeger  
Senate Committee on Education*

**SB 468**

**February 18, 2010**

My name is Mary Draeger and I am here today to testify against SB 468 because I have concerns about what it would mean for school safety if enacted. I have worked as an assistant with EBD students in Oshkosh for almost 10 years. EBD stands for emotional behavior disability. Working with EBD students is a challenging job that I enjoy. The children I work with are integrated into regular education classes and I am there for support and to assist with academics and their behaviors. I am required to be certified annually in non-violent crisis intervention procedures. This program teaches us proper de-escalation techniques and, as a last resort, use of safe restraint.

Many EBD students are easily frustrated, easy to anger and unfortunately prone to becoming violent. Working with the same students over time gives me the ability to anticipate and de-escalate most situations before any harm comes to themselves, other students or staff. Unfortunately these same students can be unpredictable and escalation can take only seconds without warning.

Let me give you an example. A student became agitated during class because he wanted to call his mother. I told him he could leave with me to call her. He then refused, but there was no way to know why. My children are unpredictable. The student suddenly began screaming obscenities at me and ran into a vacant classroom. He ran from room to room screaming and swearing. The other children in these classrooms were visibly frightened. His behavior continued to escalate. He attempted to leave the building. He tried multiple times to pull the fire alarm and I blocked his access with my body. He suddenly stopped grabbing for the alarm, put his hands around my throat and began choking me. It took two people to pull him off. If this legislation became law, those two people would have had to be certified to restrain children. If the first two people who arrived were not, they would not have been able to physically restrain this child. What if it had been a student that was being choked? What if it had been your child? Do you honestly want to impose so many conditions on the use of physical restraint, rendering a school employee powerless to effectively safeguard school safety?

I have been assaulted five times just in the past year. I have been bitten twice requiring me to go through AIDS testing. I have been punched with fists, slammed against a cement wall, kicked, spit at and recently suffered an injury to my back

Physical restraint is only used as a last resort. Our protocol now when dangerously aggressive behavior is likely to occur is to empty the classroom of the other students to get them out of harm's way. The disadvantage of this is that it disrupts learning. However, we believe it is the best way to keep all children safe. Under this legislation, this technique could be considered a

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timeout. However, our classrooms would not meet the legislation's requirements that the timeout room be free of electrical outlets or other objects that could be used by the student to harm himself or others. Does that mean we will no longer be able to use this tactic to protect school safety? When a child becomes out of control, the rest of the students in the class become upset, anxious, and frightened. We need to consider the safety, both physical and emotional, of ALL children, not just the out-of-control child.

I have great compassion and empathy for the students I work with. I have developed a trusting relationship with them. I have purchased clothing, boots, snow pants, and school supplies. I provide Valentines, Halloween costumes and buy them Christmas gifts. My students know if they need something they can always come to me and I will do what I can. I truly care about my students and this is why I choose to be generous with them.

I believe if SB 468 is passed it will only be a matter of time before the number of serious injuries in our schools increases. Please do not place unrealistic restrictions on those of us who choose to work with this vulnerable group of children. We need to protect them from hurting themselves, their classmates and the adults who are there to work with them.

Please oppose SB 468. Thank you.

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I am here to testify in support of Senate bill 468

Today you are hearing a lot of stories about students being locked into storage rooms and closets, and being physically restrained by adults. I have a story like that, of years of abuse of my son by people who should have been helping him. But I am choosing to focus on Positive Behavioral Supports, and why they are so important.

My son Sam has autism. He was mostly included in elementary school classes. However when he went to Middle School, he was put in a more restrictive placement, where he was miserable. He was in a placement where the teacher did not understand autism and used humiliation, threats, intimidation, and frequent use of a seclusion room. Her need for control caused her to engage in constant unnecessary power struggles. This type of treatment made his behavior escalate. He became a very angry boy. He had outbursts several times a day, and soon was never allowed to leave the resource room and often was dragged to a closet and locked in.

When my son came home with bruises, I pulled him from school, got an advocate, and called child protection. Here is where things turned around. After a marathon IEP with an advocate from Wisconsin FACETS and an autism consultant, Sam was able to go back to school.

My son went back to middle school but not to the same classroom and teacher. He went to the classroom next door. His new teacher evaluated his behavior to understand what was triggering his outbursts. She listened to the autism consultant's advice about providing visual supports, extra processing time, allowed the use of a keyboard or dictation instead of having him write with a pen and paper. When he asked for a break, she let him take a break. None of these interventions had been used by his previous teacher. None of these interventions are expensive.

Sam calmed down in the new classroom and after a few weeks he was no longer afraid to go to school. His outbursts went from 4-5 per day to about 1 per week. Soon he was able to attend classes with his typically developing peers outside the resource room. His attendance improved, his grades improved, and he was able to join the choir.

When he went to High School he was fully included with a paraprofessional and resource room support for study hall. At a parent teacher conference his sophomore year, the assistant principal who was on Sam's team told my husband and I that when he looked at Sam's file before his freshman year, he was afraid that the school would not be able to meet his needs, and he doubted Sam would be successful in his building. But he said that the student described in the file was not the Sam he had come to know. I tried to explain that Sam's behavior was a result of how he had been treated, but I could tell he didn't believe me. He couldn't imagine professionals in his district who would treat a child so badly.

This bill is being fought by some because they claim it is too expensive. On the contrary, research shows that instituting PBIS reduces behavior problems that disrupt the learning of all. If our goal is to increase learning and safety for all, why are some teachers still using strategies that INCREASE undesirable behavior? Why are some teachers so resistant to updating their skills, and don't use proven strategies

to support struggling students? Why would administrators support such teachers? I wish we did not need to mandate this, but it appears to be necessary.

Our grandmas told us "an ounce of prevention is worth a pound of cure." PBIS puts the focus on preventing problems from escalating, not on punishments that do not work. Use of PBIS is the evidence-based way to keep students and teachers safe.

From my experience, the positive change in my son's behavior was due to in the way he was treated and the use of well-documented best practice. When he was welcomed, cared for, and given the accommodations he required due to his autism, he blossomed.

It wasn't expensive. Respect does not cost a lot of money.

Emily Levine, 7680 N Longview Dr., Glendale, WI 53209 414-427-9345

RE: SB 468

Senate Committee on Education

Submitted By Kirby Lentz, Ed.D., Senior Policy Analyst

### **ORAL TESTIMONY**

I am Dr. Kirby Lentz from Onalaska. I have spent my forty year career working with students with special needs and I have an adult child with disabilities. The past twenty years, I have consulted, presented, and have written about school-parent relationships and developing meaningful and collaborative IEPs for students with disabilities. I have advocated and worked hard to reduce the use and the practice of aversive behavioral procedures, including seclusion and restraint.

I will be the first person to say that aversive behavioral procedures do not teach alternative behaviors, do not remediate behavioral issues, and do not fit into any environment – school or community.

I oppose Senate Bill 468, not because of the need to reduce and make rare the use of aversive behavioral procedures; I totally support a rarely used paradigm. My opposition is based upon the process detailed in the Bill. My main contention is the lack of involvement of the student's IEP team. The Bill is directed toward Chapter 115 and special education. Each student with a disability has an IEP team. It is this team that must be engaged in this process, not a prescriptive and generalized state rule.

Through my work facilitating collaborative IEP teams across the country, I have seen great things happen to meet student needs through IEP teams. Developing appropriate behavioral strategies, monitoring the application of agreed upon protocols, and evaluating its benefit and effectiveness is best done by the IEP team. This IEP team responsibility is clearly stated in IDEIA and PI-115. I have also seen reporting similar to the reporting proposed in SB 468 end up as a checklist, filed, and forgotten.

Through the collaboration (parents and teachers) of IEP development, including behavioral intervention plans; I have experienced functional behavioral assessments that have eliminated and reduced aversive techniques, propelled student achievement and social acceptance. For example in one case, a student having autism, would engage in severe self abuse and vacate or leave an instructional area, run out of the classroom often hitting, kicking, and screaming resulting in many school personnel chasing, tackling, and physically transporting the student back into the area he left. The IEP team in completing its functional behavioral assessment hypothesized that the student was feeling the environment was too noisy and too many people were too close. The IEP team, including the student and the parents designed a simple procedure in which the student learned to hold up an "I need a break" card and be allowed to go to a quieter area for five minutes.





He learned to leave to this quieter area often with his assignments and teacher approval, and gradually vacating, hitting, and restraint became rare. Self-abuse continued, but not to the degree he needed to be restrained for protection. Parents engaged this process at home and in the community.

There are scores of examples, but the problem with generalized and restrictive procedures such as this Bill weakens the IEP team function and eliminates people who are closest to the student to find meaningful and often simple means to dealing with difficult situations.

I would offer the following recommendations:

1. Replace SB 468 with language similar to HR 4247
2. DPI should re-issue the Information Bulletin 7.01
3. LEAs should develop local policies in ways that are meaningful to that district.
4. Strengthen the IEP process and the IEP team function at the local level.
5. Remove all the training requirements by the LEA in this Bill and demand that this is part of post secondary teacher training curriculum by our colleges and universities. The LEA would assess on teacher hiring the ability of the prospective teacher to handle behavioral interventions and understand principles of positive behavior supports.
6. LEA develop monitoring reports they feel are necessary for them to monitor and assess utilization of aversive and positive behavior procedures. A statewide database will do little to affect individual student achievement.
7. DPI and LEAs support groups such as FACETS who help parents understand behavioral strategies, how to monitor effectiveness, and how to be equal partners in the IEP team.
8. DPI takes a consulting and supportive role in this issue rather than compliance monitor
9. This is an unfunded mandate. I would rather have LEAs use what money they have for instruction than pay for training that should be done at the university level, to collate superficial data to DPI with little probability of decreasing the use of aversive behavior techniques, or to pay a teacher or administrator extra money to watch over a restraint.

I believe it is imperative that seclusion and restraint are rarely used. We must, however ensure that the process you approve actually will support what is best for the individual LEA, parents, and each Wisconsin student. I do not believe the process you have put forward in SB 468 will do this. Thank you.



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Testimony of Jennifer Nickowski, Somerset teacher  
Senate Committee on Education

SB 468

February 18, 2010

My name is Jennifer Nickowski and I am a Special Education teacher in the School District of Somerset. I am a Certified Non-Violent Crisis Intervention Specialist for our District and I am also our Association President. Today I am here to testify against SB 468 because I am concerned about how it would impact the safety of students and staff.

As our Certified Non-Violent Crisis Intervention Specialist for our district, I support proper training in classroom management and the teaching of de-escalation techniques. I believe it is of utmost importance to Wisconsin educators that students are physically and emotionally safe at school.

I am concerned about maintaining safety, and a safe learning environment for all, which in my own classroom, requires the ability to use minor or incidental contact at times to maintain order and control. This type of contact could be placing a hand on a student's shoulder to let them know they can not go near another student. The majority of my students are on the Autism spectrum. They can trigger each other with simple movements and are very aware of what each is doing. Almost daily we have to use incidental contact to keep students from going after each other. The students may perceive another student using a computer in a bad way. If I was not able to use incidental contact, the situation would end up in a physical altercation; where one student would get hurt. School staff is aware of the triggers with my students and have also had to use incidental contact on occasions.

There have been incidences where staff members have had to use restraint on a student to keep a situation from escalating. One incidence in particular we had a student who was a runner. The student would run out of the school and on one occasion he ran over a mile. Our school parallels the major road that runs through town and we also have train tracks. We could not allow the student to run out of the school any longer for his own safety. We needed to prevent the situation and the unknown and we had to do this by using a restraint.

The proposed bill would allow me, support staff, and any educators to intervene only in case of an emergency. What would constitute an emergency? Would it be when a situation is escalating, during which time a violent outburst could be prevented, or only when harm has been inflicted on someone?

I work in a district where the severity of behavioral and other disabilities are increasing, and treatment options that would meet the children's mental health needs are limited or nonexistent. The lack of adequate special education funding, means that children are unable to obtain the mental health and other highly skilled intervening services that they need to be able to learn to control aggressive behavior and attend school without endangering others. The lack of needed services results in children whose inability to control aggressive behaviors impact the learning environment for everyone, including teachers, staff and other students.

Untreated mental health issues, and other severe disabilities unfortunately can and do result in children manifesting aggressive behaviors in school. Some examples of the behavior exhibited by students I have worked with include randomly striking out at others; students and adults and running to escape. And my district is not alone in experiencing this phenomenon. As a result, special education teachers, support

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staff, and perhaps most importantly, other students are facing and witnessing dangerous behaviors every day. This bill would prevent school staff from intervening in a situation in order to prevent a serious incident from occurring. When properly trained, school staff can de-escalate some situations, and understand when to intervene to prevent someone from getting hurt.

Those of us who teach children with special needs learn our students' triggers and can predict with great accuracy when a situation will become violent and unsafe. If we are hampered in how we can respond, or if we don't respond for fear that we will be disciplined or found in violation of state law, incidents of violence and injury will increase at an alarming rate in our schools. Essentially, this bill demands a "hands off" approach. One casualty of such an approach is the right of all students to a positive and safe learning environment.

Please oppose SB 468 because it severely limits the options that I and other educators need to have available to prevent injury and to maintain a safe and positive learning environment.

Jennifer Nickowski  
1228 Lokhorst Street  
Baldwin, WI 54002

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My name is Rhonda J. Greenhaw. Each year in Wisconsin classrooms, children with behavioral issues are secluded and exposed to the improper use of restraints, children like my daughter, Alana – a child with a disability. My daughter is autistic, and she experiences some significant challenges. When my daughter was entering kindergarten, we had an IEP in which the district told us they had created a “special program” for my daughter and some other children – a transitional kindergarten – and we were promised that it was an exceptional opportunity for our daughter.

Before the start of school, my husband and I visited the classroom. It was a small, crowded room, staffed with a regular education teacher, a special education teacher, and one aide, and slated to have 19 regular education and six special education students. My husband and I expressed our concerns: our daughter’s challenges were significant, and the staffing levels seemed extremely inadequate to appropriately supervise her. One of my daughter’s behaviors is Pica, a behavior that compels her to consume non-food items. We have had to visit the emergency room when she swallowed a light bulb, and we have had to remove nails and other potentially fatal objects from her mouth. In addition, her other impulse control issues could result in a lot of running around and grabbing behaviors if not properly managed. We were very concerned that the classroom presented too many opportunities for injury. Other special education parents also expressed discomfort with the low staffing levels, yet we were told to trust the school.

The first day of class was chaotic. The classroom aide was outside at the buses, the special education teacher was in the hall talking to a parent, and the regular education teacher was trying to deal with a throng of students. The special education teacher frantically told us to just leave Alana in the classroom. We set her in her desk, and moved to the side of the room to watch. We were extremely alarmed as our daughter and another special education student, wandered the room. She picked up a group of sharpened pencils and held them in front of her face as she walked around, she attempted to put computer cords in her mouth and my husband had to intervene. In order to keep her safe, we stayed in the classroom for nearly an hour until everyone was settled down and we were able to hand her off to the special education teacher. She promised us that this was just first day issues, but clearly our daughter and other students needed more support in that environment. Several of the parents decided to have a meeting with the district Director of Special Education, the principle, and the teachers. We described what we witnessed, and detailed our children’s challenges, making it clear that in such an environment, appropriate support was critical for safety. The school was only willing to provide an additional part time aide to the classroom.

For the next three days I visited the classroom periodically. Each time I came to the school, the regular education students were involved in wonderful projects. The special education students, however, were not in the classroom. They were pulled out into a “resource room.” This was a windowless room that contained leftover computer equipment, a few toys, and boxes of old school materials.





On my daughter's fourth day of school, when I went into the classroom the regular education students were coloring the "special person of the day," and the special education students were in the "resource room." I found my daughter running in circles with a dog bone chew toy in her mouth, two other students were tussling over a computer keyboard, there were no activities out on any of the tables, and the special education teacher and aide were standing in the corner near the door. When I came into the room, the teacher grabbed my daughter's hand and said, "come on Alana, let's read." When I asked about going into the classroom, the teacher said they were just getting ready to go, and lined everyone up and went to the classroom. The regular education teacher expressed surprise when we arrived, and the special education teacher said, "oh, you're not ready for us?" All of the special education students then had to wait in the hallway for ten minutes. When we were finally allowed in, the regular education students were on the floor sitting in a circle in front of the teacher. My daughter and another special education student with behavior issues were led to the circle, and strapped into two waiting Ripkin chairs positioned on the periphery of the circle about two feet from a cement wall. These chairs are like wooden high chairs. I was literally frozen in my place as I watched my daughter and the other student strapped into the chair. I didn't know what to do. I felt so bad for her, as all of the other students watched her getting restrained. I was also terrified, because my daughter is tall, and was able to touch the floor. She was struggling against the restraints and trying to reach the other children; she could have very easily tipped over in the chair, slamming into the cement wall, which could have resulted in a very serious head trauma.

That was the last time my daughter was in that classroom. We pulled our daughter out of school immediately for her own safety. Yet the effects of those four days remain. Our daughter developed aggressive behaviors in that classroom that persist to this day. Additionally, considerable district resources had to be spent to address the situation – we ended up having eight IEPs, three of which were either facilitated or mediated by the state.

In addition to being the parent of a child with behavior issues, I am also a behavior analyst. I work with children with behavior issues in my practice, using applied behavior analysis to provide interventions at home, in the community, and the school. I can tell you that this legislation is not only critical to the safety of children, it is also good practice. By calling for the use of positive behavior supports, this legislation will provide schools guidance using behavior analytic principles to create effective methods for addressing challenging behaviors.

This legislation will result in functional behavior assessments appropriate supports for challenging behaviors. These methods can be used to reduce or eliminate challenging behaviors by determining the function of the behavior the child is displaying, and then teaching appropriate replacement behaviors. Children can be taught to have "quiet hands" in circle time, or to ask appropriately for attention or breaks. The child develops self-control, a pivotal behavior that allows them exposure additional areas of reinforcement, enabling them to spend instructive time in the classroom with peers who can act as behavioral models, reinforce communication skills,



and will provide a host of other positive experiences for both children with special needs and typically developed children.

Districts that spend the resources upfront on appropriate positive behavior support programs will save money in the long run, saving our state millions of dollars in later, more expensive interventions, such as alternative placements. Students who learn appropriate replacement behaviors can eventually have their supports faded as their functional abilities improve.

Finally, young students who are restrained as a means of control rather than taught to control their own behavior, will only be a growing problem as the child matures. They will be a larger child without the ability to self-control. This exposes the staff and the student to increased risk of injury as they attempt to use restraints on a larger and larger child, and the state or district will then be exposed to increased risk for financial liability if something goes wrong. And what is the outcome for a student who never learns self-control? Ultimately they may have to be confined, or injure someone, or get injured or worse. Every year in the United States children die as the result of improperly used restraints.

The best practice is to ensure that students in Wisconsin schools are provided with positive behavior supports, and that teachers and school districts are given clear instruction about how to create and implement these supports. Seclusion and restraints should never be a default mechanism employed to deal with a lack of appropriate staffing or training. With the rate of increase with children with developmental disabilities, and the imperative of inclusion expressed in IDEA, it is essential that Wisconsin create a policy that will protect children and teachers, and provide the guidance and oversight that is so badly needed.

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***Testimony of Laura Vernon  
Senate Committee on Education  
SB 468***

***February 18, 2010***

My name is Laura Vernon and I work in the Milwaukee Public Schools. I am here today to testify against SB 468. First let me say that it has been an honor for me to work in the public education field as a security officer for more than 35 years. One thing that has become very clear to me as a School Safety Officer is that the safety of our children is of utmost importance. It is very difficult for children to learn if they do not feel safe. We should never have to worry about safety in a school setting, but unfortunately, that is not always the case. My colleagues and I work hard every day to try and make our public schools a safe environment for all children to learn and for educators to teach. I enjoy what I do, but it is becoming more and more challenging for educators to maintain a controlled environment where all children learn. Let me tell you why.

Of course we educate all children. Every child has a right to a quality public education. But we are experiencing an influx of children in our public school system that had previously been in environments more conducive to their special needs. Unfortunately the Residential Treatment Centers that serviced them have been shut down or have drastically reduced services because of budget cuts and no funding source. Alternative placements are very limited, so public education opens their doors and classrooms. The results are that we have:

- ◆ Children with severe anger management issues
- ◆ Children that are verbally and physically abusive to other students and staff
- ◆ Children who have aggressive disregard for others and display that type of behavior.

I have witnessed various techniques educators use to calm situations with children that display challenging behaviors. Let me share with you an example. Our special education classrooms often use restorative justice methods to calm students. They try "circles" to redirect negative behaviors. But when one of the students gets angry without any identifiable provocation, all of those techniques no longer work.

Just recently one of our 7<sup>th</sup> grade female students in an EBD classroom got angry when the teacher redirected her about one of the classroom assignments. This girl's emotions exploded and she started trashing the classroom. We had to move the students out of the classroom. She was throwing desks, chairs, books, file cabinets and computer equipment. We had to get the teacher out of the classroom also because the anger was directed toward him. The classroom was trashed. The student wanted to leave the classroom. We would not allow her to because of the threats she

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continuously made. It took well over an hour to calm her, but not without sustaining injury from the student. We must act quickly and cautiously.

Because this legislation puts so many conditions on the use of physical restraint and timeouts, school staff may be hesitant to act to quickly to address student safety as a situation is developing. As a child's behavior escalates to out-of-control levels, most techniques have little or no effect and classrooms are literally destroyed. Staff and students risk injury. The child quite often has self-inflicted injury. My colleagues and I are left with no choice but to restrain and seclude the child, and in the process, we often sustain injuries.

Any legislative attempt to restrict or impede educators from securing calm and safety for everyone in a public school setting endangers and compromises the entire concept of a safe school learning environment.

Please be vigilant in protecting the rights of all children and educators to a great public school by giving educators the tools we need to protect the children that are our future - our real hope for a better society.

Please oppose SB 468.

Laura Vernon  
4087 North 60<sup>th</sup> Street  
Milwaukee, WI 53216

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**Testimony of Pat Burlew Cox  
Before the Senate Education Committee  
Senate Bill 468  
February 18, 2010**

Good morning. My name is Pat Burlew Cox and I am a school social worker in the Sun Prairie School District. I work every day with children who struggle at school with showing appropriate behavior, including, at times those behaviors that are not safe toward themselves or others. When we talk about seclusion and restraint it brings to mind an institution because these are institutional words. At school we are really talking about a place for a "time-out" or a safe place to calm down. At an institution, the word restraint conjures up tying down. At school, it is specially trained staff safely assisting a student to that safe place. It is never as a discipline - it is for assistance and support for an upset student. Our goal is to keep everyone safe. At school, seclusion means a safe place to calm down. A child is NEVER left alone or out of view. Again the goal is safety, and once the child calms; to help that child figure out what went wrong or what is bothering him or her. Then we work to fix it and our goal is to get the child back to class. With all the conditions that SB468 imposes on school staff, I would question my ability to effectively manage and improve student behavior.

Think about your worst day as a child, or perhaps a very embarrassing moment. Would you want your emotions on display for all of your peers? What if you hurt someone? In a moment when you were so upset you were not thinking? How would you face that person again? How would you feel about walking into a room where everyone saw that? Our goal in helping a child get to a safe place is about safety and learning. The safe place can be a chance to express anger and emotion safely. Sometimes that means yelling and crying. Sometimes it means using a weighted blanket or a sensory swing. The learning happens once a child calms down. Then we can talk and we can teach. We learn what happened from the child's perspective. We teach strategies for calming down, asking for help or asking to take a break. Sometimes we role-play how to fix the problem and practice a solution. We work on how to re-enter the classroom so that it is a successful transition back.

How does this look at school? The first thing we do as a school is try to prevent a meltdown that might lead to the need for a child to leave the classroom. As we get to know our kids we look for those signs that indicate agitation or upset. We use strategies to intervene before an upset. Usually those strategies work, but not always. Here is an example of a student at the elementary level. A second grade student was struggling with some rigid thinking, wanting to be perfect at everything and low frustration tolerance. The class had a science project that involved building a parachute using string, paperclips, tape, a clothespin and a paper towel. Several students had some trouble with the tape not sticking or tearing the paper towel. Most of the students who had a mishap got extra material, asked for help or buddied up with another student. My little buddy threw his material and then started to grab the materials of others, and knocked over some chairs

Mary Bell, President  
Dan Burkhalter, Executive Director



and desks. Help was requested. Another staff member and I responded. When we got there, the teacher was able to take the class out of the room. We first made a verbal connection to our student and tried to convince him to go with us to the cool down room. Because we already had a relationship with him and he had been to the cool down room before, he was eventually able to walk with us rather than needing assistance to get there. Once there he was able to express his anger and cry a bit. Then we were able to talk and figure out what had gone wrong, other ways he could handle it and how he could fix it with his teacher. He was able to talk with his teacher calmly. He could tell his teacher how he would try to handle his frustration the next time. He was able to apologize to his teacher for his behavior. He was welcomed back to the classroom and was able to complete his day without another incident. My second grade friend here needed that time away from his class to express his emotions and learn some new ways to deal with his frustrations. His parents have been involved every step of the way. We have worked together to help him. This year is completely different. My now third grade buddy has come to me only twice this year on his own initiative. Once he stopped by my office to tell me that his mother had told him to stop in to say 'hi' because I might think that he has forgotten me. He is having a great year. He has learned that he can ask for help. He has learned that there are people that will help him when he is having a hard time. That's what we are aiming for with all kids.

Educators need to be allowed to use their judgment to manage student behaviors and maintain a safe school environment for all children. Should SB468 become law, educators would question their judgment and hesitate to act until a situation is out of control leading to unsafe schools. Please oppose SB468.

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*Every kid  
deserves a  
Great School!*



**Testimony regarding Restraint and Seclusion Hearing February 18, 2010**

**Good Morning:**

**My name is Grace Michaud , my husband is David Hiltunen. We would like to include this statement as testimony to encourage you to support the legislation to end the use of seclusion and restraint with our children. I hope to make my statement brief, but should you require additional documentation to support this testimony, I would be happy to provide copies of IEP's and Behavior Plans, as well as e-mail requests and suggestions and correspondence with school officials and The Department Of Public Instruction.**

**Our son was Niles Hiltunen. His photo and his story appears in the Out Of the Darkness Booklet. He has since passed away on May, 27 2009. We are here in hopes that other children do not have to experience this type of treatment .... especially in school.**

**We moved into the Florence District in 2004-05 school year. I had requested an Autism Consultant work with staff and training in Autism and directly with my son. Niles had some challenging behaviors that the teacher may have benefited from support of a consultant.**

**Our situation began toward the end of the school year of 2006. We had conflict with school officials after a staff member reported our son to the sheriff department for assault while she worked in the classroom. It was later learned that this staff member had not had the appropriate training to work with children like my son. As a result, discussions included if the Sheriff department might use handcuffs and the padded cell in the jail with my son. He had just turned 11 years old and attended the elementary school.**

**As I began advocating for my son and what was in his best interests, I met strong intimidation from the school. A 3 month child protective investigation was involved. During this time I asked Dr. Glenis Benson to call the Social Workers involved to explain Autism. Needless to say, I found this as deliberate intimidation and harassment that the School initiated and the County continued. At the end of the 3 months the allegations were dropped, yet the County had placed conditions on our use of the State Funds such as Family Support Funds and the Children's Waiver Program.**

**Niles was moved to the Middle School building during the 2006-07 school year and had a new teacher. He was 11 years old. His behaviors were still challenging and the autism consultants (Of Whom I would have Preferred not using) presented a behavior plan that indicated the use of a "Quiet Room".**

**As time went on, Niles behaviors did NOT improve; in fact they got worse.**

**Niles developed severe anxiety. He was terrified to walk through hallways, doorways, and where he used to enjoy going to the lake to swim; he was afraid to get out of the car. It was especially difficult to go long distances to doctor appointments because he would not get out of the car to use a toilet. He loved to go to fast food restaurants, now we needed to use only the drive-thru. He refused to go into the Sauna room in our home. At times Niles seemed to be terrorized to do**



activities that had normally given him such happiness in the past. During the IEP Meetings and countless other meetings I opposed the use of the quiet room. The school refused to eliminate the use of the "Quiet Room".... Niles also began to become more and more violent. At school, Which resulted in increased use of seclusion and increased the violent behavior which then came into his home environment.

Although I continued for years to oppose the use of this room in IEP Meetings; the school refused to stop this practice and the Autism Consultant continued to promote this line of behavior intervention. The Data reflected that we were not making progress but that Niles behaviors were becoming MORE Challenging. The Schools reaction was to ask me what they should do when Niles presented such "Bad" Behaviors..... I was getting very angry at the school because the Behavior Plan seemed to work from a Crisis situation backward.

One example of the misuse of the quiet room documented the quiet room being used because Niles did not want to take his boot off when he arrived in the morning. The data reflected that Niles spent 5 visits in the quiet room totaling 19 minutes within a 64 minute time frame. There are plenty of Data sheets that describe similar uses of the quiet room. My question had been where was such critical danger to himself or others for him wanting to keep his boots on?

We took Niles to various Psychiatrists in Madison, and a Psychologists at the Marshfield Clinic, as well as our Neurologist suggested revisiting the Behavior Intervention Plans.... Specifically they suggested looking more at antecedents to avoid the meltdowns in the first place. I brought all of these suggestions along with documentation from these specialist to the table at Meetings. I sent Web Site information that addressed seclusion and restraint not being an appropriate intervention and offering better alternative interventions. The information I forwarded was from The American Psychiatric Association along with other Psychiatric organizations that in fact offered Ideas for Reducing Seclusion and Restraint in Behavioral Health.

I really would like to emphasize that with all of my opposition to the use of this practice, I presented a sound argument WHY this was not acceptable. I was not just an Angry Mother.... I had evidence from a Large variety of Experts, Doctors, And a News Article from July 9 Wall Street Journal Called Isabel's Office, and information from the American Psychiatric Association... not to mention the fact that Niles behaviors were getting MORE Troublesome. As a parent, I can tell you it is quite frustrating to send your child to school to know that what they are doing to your child is actually harmful.

There was a short time within the school year where the regular teacher was on maternity leave. The Substitute teacher respected that I did not want Niles in the "Quiet Room". She did not use it as the regular teacher had. Niles behaviors were improving and less negative reports were being seen at home. When the regular teacher returned and the "quiet room" was used again, Niles behaviors were negative and challenging again. My relationship with his teacher was deteriorating. There was one conversation where she had insinuated that I was not giving Niles his medication. She wanted me to send it to school so she could be sure he was getting it correctly. This made me even more angry.

In the end of the school year of 2007-08, I refused to continue the IEP when I was





again met with the same Behavioral Intervention Plan that contained the "Quiet Room". I asked the DRWI to help. On October of 2008, Mr. Mark Sweet observed Niles in his school environment and offered alternatives for the school to consider. Niles also had a new teacher. The use of the "Quiet Room" was discontinued and the Autism consultant was instructed to NOT work from the Crisis backward but to try to avoid the stress of the meltdown to begin with.

The new direction improved Niles behaviors. I am happy to say that in the last year of my Niles life, he was beginning to go swimming in the pool again and although he still had episodes of violent or challenging behavior, it had decreased.

January 2009, Niles had a seizure and was airlifted to Milwaukee Children's Hospital. He recovered and returned to school. May 24, 2009 Niles had another seizure and was given the same drug he had been given in January. He suffered then from an allergic reaction and stopped breathing along with V-Tach.

He suffered a Hypoxic Brain Injury that resulted in his Brain Death.

Niles Brain has been Donated to the Autism Tissue Program to study Autism and Epilepsy. He was an Organ, Eye, and Tissue Donor. Our Family has begun the Niles Hiltunen Memorial Family Support Fund and Benefit to support Families who continue live with Special Needs. This fund helps with respite for families along with other expenses families may have in supporting a person with Special Needs.

Niles life was significant. He has left quite a legacy. We see our testimony here to further the Legacy of his life. We became a part of this legislation when Niles was alive. It is very difficult to be here and speak, But we hope that our testimony will help support this legislation so that other families will be helped.

Thank You.



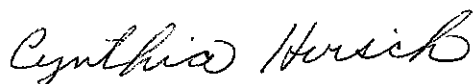
Senate Education Committee  
SB 468

This Bill is necessary. I'm an advocate for children and young adults in about twenty different school districts. This allows me to compare the huge differences in the use of restraint, seclusion and positive behavior intervention in different school districts.

Wisconsin needs laws in place to promote the use of PBIS and to regulate use of restraint and seclusion. It is a shame we need laws for some schools to do the right thing but we do. Let me give you an example in my own school district. I was at a meeting with the Wisconsin Department of Public Instruction and Quality Education Coalition. Tony Evers now State Superintendent of Schools informed us that DPI had changed a DPI bulletin on restraint and seclusion to a directive. I asked how we could insure schools would follow the directive. Tony Evers suggested we go to our school boards and ask them to adopt the directive as school policy. I asked my school district to make the DPI directive on seclusion and restraint school policy. Several school board members asked "Is the directive law?" I replied no that is why I'm asking for you to make it school policy. They did not make it school policy. The reason they gave was because if they made the directive school policy then parents might make the school follow the directive.

My school puts children with Downs Syndrom and Spinal Bifida in seclusion for crying and restrains them as a punishment not because they are a threat to themselves and others. Parents need to know what is being done to their children when they are at school. SB 468 would allow parents to know when their child is restrained or secluded.

There are so many examples I could give that have made me passionate about having a law that provides training to teachers and administrators on PBIS. The law would hopefully change schools attitudes. It is a shame we need laws to force schools to do the "Right Thing". Please pass SB 468 so all Wisconsin schools provide PBIS for our students not punish students for having a disability.



Cynthia Hirsch  
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Senate Education Committee

SB 468

I am in favor of this bill

Erin Miller

Spectrum adult

I am here to testify in support of Positive Behavior Interventions and reducing restraint and seclusion. Today you have heard from parents, educators, and concerned citizens. You have heard traumatic stories and the difference a bit of respect and compassion makes. Now I bring my own story before you, bearing witness as to what it was like to be that child. The experience of restraint and seclusion and what a difference small accommodations can make.

I am an autistic adult and was once an autistic child. I can't speak to all cases, but in my experience restraint and seclusion are usually practiced for the convenience of the teacher. When I was growing up there were no such protections in place in any state. There were no CDC statistics saying 1 in 110 children has some form of autism. There was little publicized research on the use of restraint and seclusion as a punitive means of wresting back control. My teachers assumed I was simply misbehaving and acted accordingly.

To this day I can still remember struggling to keep control, wondering why I couldn't make myself stop. My heart going from 0-350 in 2 seconds. As though outside of time, a shadow of a thought; like a darting dark fingerling brushed my consciousness. It read "I must not lash out. I must retain speech." If I didn't my teachers wouldn't understand. I didn't have the words for it then, but somehow I knew that speaking was the only way they knew how to communicate. If I couldn't tell them... if I needed to leave or was unable to calm myself according to procedure, I could physically hurt, lose my future, be forced down or beaten into submission. Perhaps in the literal sense. There were times I literally thought I was going to die.

Ten, seven or even three years ago, there simply wasn't the myriad of educational supports we have today. But we have them now! We have behavioral interventions, safe evidence-based strategies, and a level of awareness of people with disabilities we didn't have before! Understanding is not a limited commodity. There is no reason not to use them. As you make your decision realize you can and do make a difference.

Erin Miller



Senate Education Committee  
SB 468

I am in favor of this bill.

February 18, 2010

I am a parent of an adult with disabilities, and a grandparent of children with disabilities who are in the public school system. I work with families who have children with disabilities. I feel that this bill is necessary for the safety of children and school staff.

These are a few points I would like to highlight:

- \*Physical restraints will be used in limited situations, such as, in an emergency.
- \*The bill has requirements of documentation of the incidents to parents and reporting to DPI.
- \*Staff who may use restraint and seclusion will be trained on their proper use.
- \*The bill promotes positive behavior intervention and supports which will help outcomes for all students. Research shows that Positive Behavior Intervention and Support (PBIS) is an effective method of managing behavior to avoid emergency situations that lead to restraint or seclusion.
- \*It will also help the communication between staff and parents/families by requiring schools to notify parents when their child has been restrained or secluded on the same day that it happened and requiring schools to provide all of the information recorded in the school documentation to the parents.

I urge you to support SB 468. Thank you.

Mary Sobczak  
510 Hematite Street  
Hurley 54534





Senate Education Committee  
SB 468

I am in favor of this bill.

February 18, 2010

My name is Veronica Nolden. I have a son, Branden, who is six. He has Autism. Sometimes Branden gets frustrated and he throws things for reasons, like, misunderstanding and the communication barrier that is common with children with Autism. I feel this bill is important because asphyxiation is the number two killer of children with Autism by the hands of others who don't understand and don't have proper training. I can't imagine someone using inappropriate techniques that might be used in schools or in other situations outside of school and possibly harming my child, physically, emotionally, mentally or worse. This bill will require schools to train school staff and keep records on restraint and seclusion. It will also require parent consent and keep them informed of restraints and seclusion.

A handwritten signature in black ink, appearing to read 'Veronica Nolden', with a long horizontal flourish extending to the right.

Veronica Nolden  
2464 W. Lloyd Street  
Milwaukee 53205



My name is Susan Carey. My husband, Mike Garrity are parents of two daughters. Our daughter Katie, 16 has a diagnosis of Down syndrome, Autism, ADHD and Mood disorder. Katie has had struggles her whole life – some related to behavior.

While attending middle school Katie was outside with her class and didn't want to reenter. Katie ran to the woods nearby and was then carried into the school by 4 staff members and taken to a conference room where she was held face down on the floor by 2 or 3 people. The police officer who responded to a call at the school about Katie being "out of control" later told us that when he first arrived on the scene he couldn't even tell if "Katie was a boy or a girl because she was on the bottom of the pile." Katie was then handcuffed. Katie's IEP had no provision for restraint. If this bill had been in place the staff at school's school would have been trained in how to handle this situation in a better way. My husband and I later filed a complaint with the DPI for unlawful restraint, the DPI ruled in our favor and for corrective action ordered the school district to mandate non-violent crises intervention training for all employees who work with children in special education settings. The non-violent crisis intervention training, which emphasizes deescalating meltdowns as well as how to safely hold a child in an emergency, was a step in the right direction. This bill is very important because it would require all schools to train staff on the use of restraint and protect WI children and staff from injury and quite possibly save lives of children. We also feel an important part of the bill would be requiring school staff to document incidents from restraint and seclusion and to provide reports to the DPI. Children who have suffered such a trauma as restraint and seclusion cannot always report such incidents accurately and completely.

In 2006 Katie was ordered by the public school to attend the day school or a residential treatment center. Katie suffered numerous and frequent bouts of inappropriate and aversive seclusion ranging from 15 to 3 hours. The seclusion setting involved a Crisis Intervention Room where Katie was told to sit in a chair with a staff member present who at times restrained her. Also in that room were other students who Katie witnessed engaging in maladaptive behavior. By design Katie was not allowed to work on school work in the CIR, sitting for anywhere from 15 minutes to an hour – a very long time for children. This technique does not promote a child being able to calm themselves, in fact it often served to escalate her behavior.

Katie was sent to the CIR for a variety of reasons including: swearing, hitting staff, (she never hit a peer), and fleeing. However, she was also sent for taking materials not related to a lesson, sitting under a desk, and at least one time for the convenience of the staff so that they could have a meeting. She was often carried there – the report would say that she was "whisked away to the CIR". Her psychologist and psychiatrist categorically have stated that these kinds of seclusions do not teach Katie how to become a better student or citizen, nor do they deescalate behavior, but rather they make the behavior worse and inflict genuine psychological pain on the child and at times physical harm. Because of this they are also counterproductive to Katie's academic progress. During this time in Katie's life (2 ½ years) Katie would often talk about what a bad and stupid person she was. This bill would help because it would not allow seclusion to continue for more than 15 minutes at a time, unless a genuine emergency continues to exist.



After a time we placed Katie in a private setting where teaching her appropriate behavior was the most important thing she did. Positive Behavior Intervention and Support in this bill is so very important because it focuses on prevention first. PBIS is a proactive way to teach behavior taking into account that, just as all children do not learn academics the same, they do not learn appropriate behavior the same. And appropriate behavior and social skills must be taught. Children like Katie do not learn from punitive measures – you cannot punish a disability or behaviors out of someone.

We would never as educators take a struggling reader and simply tell them how to read and then expect them to master it. And then, when they don't, we would never take all printed material away from them, put them in a secluded spot and tell them they can come out when they can read. Yet, that's exactly what happens to some children who struggle with learning appropriate behavior. "Sit there until you know how to behave." You need to teach appropriate behavior in a positive way with the goal being to help that child become a better student and better citizen. We have seen this work with our own daughter in the past two years.

Finally, as an educator with almost 30 years of experience I can tell you, that for some reason we have more and more children, with and without diagnosis, who do not come to school with the tools they need to engage in appropriate behavior. Our schools need to provide guidance that this bill would give them. No educational setting should be unprepared to support students who struggle. And no child should endure the trauma that unnecessary restraint and seclusion inflicts on them.





Wisconsin Board for People  
With Developmental Disabilities

Date: February 18, 2010

To: Sen. John Lehman, Chairperson  
Members  
Committee on Education

From: Cindy Zellner-Ehlers, Chairperson *CZE/OTC*

Re: Support for SB 468: Relating to the use of positive behavioral interventions and supports and aversive interventions in schools

The Wisconsin Board for People with Developmental Disabilities strongly supports SB 468 and thanks Senator Lassa and Representative Pasch for co-sponsoring the legislation. The Committee will hear compelling testimony from parents and children who have been traumatized from seclusion or restraints. The Board applauds the bravery of these parents and children to speak publicly about these incidents.

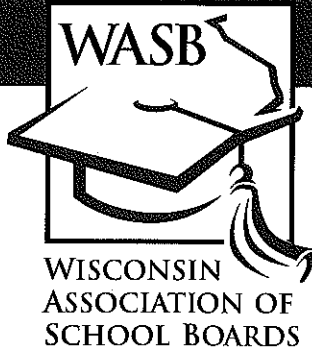
It is the view of the Board that SB 468 is long-overdue and reflects the advances made in behavioral management techniques over the years. Positive behavioral interventions are basically best practices in education. Students benefit from the use of positive behavioral interventions because they maximize their learning opportunities without the trauma associated with seclusion and restraints. School personnel benefit because implementing seclusion and restraints improperly put staff at risk of injury.

SB 468 is common-sense, comprehensive and thorough legislation beneficial to all parties involved in education. Implementation of SB 468 will prevent many abuses and support the proper education of children. Please support SB 468 and pass it out of Committee.

Thank you for your consideration of this testimony. If you have any questions, please contact Chris Thomas-Cramer, Legislative Director, at 608-266-0979 or [Christine.ThomasCramer@Wisconsin.gov](mailto:Christine.ThomasCramer@Wisconsin.gov).







122 W. WASHINGTON AVENUE, MADISON, WI 53703  
PHONE: 608-257-2622 • FAX: 608-257-8386

JOHN H. ASHLEY, EXECUTIVE DIRECTOR

TO: Senate Education Committee  
FROM: Sheri Krause, Government Relations Specialist  
DATE: February 18, 2010  
RE: Senate Bill 468, relating to the use of positive behavioral interventions and supports and aversive interventions in schools.

The Wisconsin Association of School Boards opposes Senate Bill 468, which relates to the use of positive behavioral interventions and supports and aversive interventions in schools. The WASB supports school districts' emphasis on positive behavior support approaches in all school settings and the ongoing training of school staff in the appropriate use of seclusion and restraint techniques.

Numerous concerns have been raised by special education directors and others that Senate Bill 468 is overly restrictive and prescriptive, and as a result will likely hinder efforts to develop individualized educational plans and behavioral intervention plans that effectively address students' individual needs. In addition, concerns have been raised that it school staff are overly regulated in their ability to quickly and effectively respond to unruly or disruptive behavior, staff are more likely to rely on law enforcement to intervene. The WASB shares these concerns.

Legislation has been introduced in Congress to address the appropriate use of seclusion and restraint as well. H.R. 4247 and S. 2860 are making their way through the congressional process and have considerable support. However, there are numerous conflicts between the proposed state and federal legislation. Thus, the state should refrain from advancing similar legislation until Congress has completed its work. The WASB is willing to participate in a review of state laws and regulations to ensure compliance with the federal requirements.

Thank you for your consideration.

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February 18, 2010

Senate Committee on Education Hearing for

Senate Bill 468

Testimony of

Marlea Linse, M.Ed.

WI FACETS and Parent of children with special needs

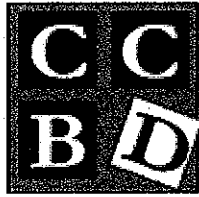
Thank you for the opportunity to speak with you. I am here in support of Senate Bill 468. I was an elementary teacher for five years and a principal for fifteen. More importantly, I am the adoptive parent of a sibling group of four children, all of whom have varying degrees of special needs. All four children have been traumatized beyond what I can even imagine.

Today I would like to share our 10-year-old's experience. He is cognitively delayed and has multiple mental health diagnoses. When Reggie came home in June of 2004, it was not uncommon for him to rage for up to two hours more than once a day at home and two to four times a week in school. Thus began the search for answers. We wanted a better way, one that was less invasive, traumatic, and emotionally charged. Our choice was to use a love based approach, described in a book by Bryan Post and Heather Forbes entitled Beyond Consequences, Logic, and Control. After reading this book, when Reggie raged my husband or I stayed with him, reassured him he was safe and we would not let him hurt himself. We helped him learn relaxation strategies in his calmer moments and gradually we could get him to use them even in the early stages of a rage. We did not see an overnight turn around. We did see a decrease in the number of rages, the intensity of them and the duration. We knew we were on the right path and shared our experiences with his teachers at school. This strategy proved to us that seclusion and restraint actually escalated his behavior. Teaching him relaxation techniques and having knowledge of what triggered his rages coupled with less invasive techniques allowed us to actually prevent rages more and more as time went on.

We shared our new found knowledge with Reggie's teachers and they too saw improved behavior. I am happy to report that Reggie rarely rages at home or at school. We have learned his triggers and can often prevent an oncoming rage. When he does lose control, he can be brought back to a calm state within ten minutes.

Our learning curve was steep. I believe that Senate Bill 468 will encourage the use of positive behavior intervention strategies by requiring schools to train staff and use evidence-based practices to facilitate the child's successful awareness, self-management, and engagement which, as in Reggie's case proved very effective.





## **The Council for Children with Behavioral Disorders**

*A Division of the Council for Exceptional Children*

### **CCBD'S POSITION SUMMARY ON Physical Restraint & Seclusion Procedures in School Settings**

Approved by the Executive Committee on 5-17-09

This document is a summary of policy recommendations from two longer and more detailed documents available from the Council for Children with Behavioral Disorders (CCBD) regarding the use of physical restraint and seclusion procedures in schools.

#### **Declaration of Principles:**

- CCBD supports the following principles as related to the use of restraint or seclusion procedures:
  - Behavioral interventions for children must promote the right of all children to be treated with dignity.
  - All children should receive necessary educational and mental health supports and programming in a safe and least-restrictive environment.
  - Positive and appropriate educational interventions, as well as mental health supports, should be provided routinely to all children who need them.
  - Behavioral interventions should emphasize prevention and creating positive behavioral supports.
  - Schools should have adequate staffing levels to effectively provide positive supports to student and should be staffed with appropriately trained personnel.
  - All staff in schools should have mandatory conflict de-escalation training, and conflict de-escalation techniques should be employed by all school staff to avoid and defuse crisis and conflict situations.
  - All children whose pattern of behavior impedes their learning or the learning of others should receive appropriate educational assessment, including Functional Behavioral Assessments followed by Behavioral Intervention Plans which incorporate appropriate positive behavioral interventions, including instruction in appropriate behavior and strategies to de-escalate their own behavior.

## **Recommendations:**

- CCBD believes that physical restraint or seclusion procedures should be used in school settings only when the physical safety of the student or others is in immediate danger.
- Mechanical or chemical restraints should never be used in school settings when their purpose is simply to manage or address student behavior (other than their use by law endorsement or when students in travel restraints in vehicles). Their use for other instructional related purposes should be supervised by qualified and trained individuals and in accord with professional standards for their use.
- Neither restraints nor seclusion should be used as a punishment to force compliance or as a substitute for appropriate educational support.
- CCBD calls for any school which employs physical restraint or seclusion procedures to have a written positive behavior support plan specific to that program, pre-established emergency procedures, specific procedures and training related to the use of restraint and seclusion, and data to support the implementation of the principles of positive behavior supports in that environment as well as data regarding the specific uses of restraint and seclusion.
- All seclusion environments should be safe and humane and should be inspected at least annually, not only by fire or safety inspectors but for programmatic implementation of guidelines and data related to its use.
- Any student in seclusion must be continuously observed by an adult both visually and aurally for the entire period of the seclusion. Occasional checks are not acceptable.
- CCBD calls for federal, state, and provincial legislation or regulation which would require the implementation of:
  - Recognition that restraint and seclusion procedures are emergency, not treatment, procedures.
  - Requirement that preventive measures such as conflict de-escalation procedures be in place in schools where restraints or seclusion will be employed.
  - Requirements that individualized safety plans are created for students whose behavior could reasonably be predicted to pose a danger. Those safety plans for students with disabilities must be created by the student's IEP team and included as a part of the IEP. These plans can also be created for students without disabilities.
  - Requirements that comprehensive debriefings occur after each use of restraint or seclusion and that reports of the incident are created.
  - Requirement that data on restraints and seclusion are reported to an outside agency such as the state or provincial department of education.
- CCBD does not believe that "guidelines" or "technical assistance documents" are generally adequate to regulate the use of these procedures since abuses continue to occur

in states or provinces where guidelines are in place and these guidelines have few mechanisms for providing oversight or correction of abuses.

- CCBD calls for additional research regarding the use of physical restraint and seclusion with students across all settings.

**White Papers from which these recommendations are drawn:**

Council for Children with Behavior Disorders (May, 2009). *CCBD Position on the Use of Physical Restraint Procedures in School Settings*. Reston, VA: Author.

Council for Children with Behavior Disorders (May, 2009). *CCBD Position on the Use of Seclusion Procedures in School Settings*. Reston, VA: Author.







## **The Council for Children with Behavioral Disorders**

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*A Division of the Council for Exceptional Children*

### **CCBD'S POSITION SUMMARY ON**

### **The Use of Seclusion in School Settings**

Approved by the Executive Committee on 5-17-09

The document provides policy recommendations of the Council for Children with Behavioral Disorders (CCBD) regarding the use of seclusion procedures in schools. It includes: (a) an Introduction, (b) a Declaration of Principles, and (c) Recommendations Regarding the Use of Seclusion in School Settings. Explanation or elaboration of policy recommendations is provided in italics. A similar and parallel document will provide policy recommendations related to the use of physical restraint procedures in school settings which is often associated with the use of seclusion procedures.

### **Introduction**

#### ***What is seclusion?***

Seclusion is the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. This includes situations where a door is locked as well as where the door is blocked by other objects or held by staff. Any time a student is involuntarily alone in a room and prevented from leaving should be considered seclusion regardless of the intended purpose or the name applied to this procedure or the name of the place where the student is secluded.

Seclusion is often associated with the use of physical restraint in that physical restraint is regularly used to transport a student to a seclusion environment (Ryan, Peterson, Tetreault, & Van der Hagen, 2007). However, seclusion may occur without employing physical restraint.

In addition, schools may employ a variety of environments which may not meet the definition of seclusion (confinement alone without immediate ability to leave) but which have at least some of the elements of seclusion. These might include detention rooms and in-school suspension rooms where students may not be alone in the environment or where they are not technically prevented from leaving, although they may perceive that they are prevented from leaving. While these environments may not have all of the features of true seclusion, many of the issues of concern regarding interference with student rights, lack of access to instruction, separation from peers, and lack of ability to leave may still apply to these environments. These environments may be subject to possible abuse and may require standards for use parallel to the ones discussed here for seclusion.

Seclusion should also be distinguished from the situation where students have made the “free-will” choice to go to the room where they are alone and where they have the ability to leave and return to the classroom at any time. These rooms sometimes have similar names to seclusion rooms and have been called “safe places” or “cool down rooms.” When used in this way, these types of procedures would not constitute seclusion.

### ***What is the purpose for employing seclusion?***

Seclusion in school settings seems to be used often as a consequence or punishment for inappropriate behavior for purposes of changing the behavior. Typically, this would mean that when a student misbehaves, the student would be sent to the seclusion room for a period of time. However, a wide variety of purposes for seclusion have been identified. These include removal from a reinforcing environment, permitting the student’s emotions to cool down, or permitting the student to engage in a problem solving process. Other purposes might include restoring order to the classroom environment from which the student was removed, providing relief for the teacher from managing the student’s behavior or the student’s noncompliance with adult commands (Ryan, Peterson, & Rozalski, 2007). Most schools or programs that employ seclusion view it as a behavior change procedure and use it as a consequence when a student is in a behavioral crisis. Although commonly used for a variety of purposes, most professionals believe

that seclusion is warranted only when a student's behavior is so out of control or so dangerous that the student's behavior in the current environment poses a risk of injury to the student or others.

"Time-out" or "time-out from positive reinforcement" is often confounded with seclusion. The purpose of time-out is to remove the student from access to reinforcement which may be supporting inappropriate behaviors (extinction) or to remove a student's access to the positive reinforcement occurring in an environment in order to diminish specific inappropriate behaviors. Time-out is a behavior reduction strategy (punishment) and thus in the technical usage within the applied behavior analysis community is a punishment even though it is not associated with our normal meaning of punishment. Three forms of time-out are common in the literature on applied behavior analysis based on where the student is placed to limit access to reinforcement. These are inclusionary time out, exclusionary time out, and seclusionary time out. Inclusionary time out occurs within the classroom with the student maintaining the ability to continue to see and hear what is going on in the classroom. Exclusionary time out sends the student to an environment where there is no longer access to what is going on in the classroom but where the student may have access to other students or staff. Examples include being sent to another classroom, the principal's office, a detention room, or the hallway. Seclusionary time-out sends the student to a location where the student is alone and therefore not able to access reinforcement. The student may or may not be physically prevented from leaving.

For our purposes, seclusion occurs any time when a student is in a place where he or she is alone and is prevented from leaving that environment, regardless of the purpose for placing the student in this environment. A restrictive time-out would be seclusion if the student is prevented from leaving.

Because of the popularity of the term, a time-out room has sometimes become associated with a particular location regardless of whether it is used as a place free of reinforcement. It is important to note that a time-out room may be a way to manage reinforcement and may not be seclusion as defined here. However, many times a time-out room is a place where seclusion occurs, regardless of the intended purpose of sending the student there. Schools have developed a wide variety of names for the locations where students are sent to be secluded. Regardless of the name or the purpose, if a student is alone and prevented from leaving, this setting constitutes seclusion.

Seclusion, like physical restraint procedures, has been in widespread use across most human service, medical, juvenile justice, and education agency programs for a long period of time. While historically the use of seclusion in education has typically been in special education programs, these procedures are now widely believed to be used more broadly with any student and may be viewed as a part of the overall school program. Although data about the extent or circumstances of the use of seclusion in schools at the present time is not available, most believe that the use of these procedures in schools has increased as more students with difficult or severe behavioral needs are being served in general education schools and classes.

### ***What are the problems with the use of seclusion?***

Although there have been no recent studies of seclusion in schools, injuries and deaths from suicide have been reported where seclusion has been used. A recent report from the National Disability Rights Network has enumerated a wide variety of abuses of seclusion with at least one instance of a student's death while in seclusion and at least one other attempt to commit suicide documented (National Disability Rights Network, 2009). The report indicates there may also have been many more physical injuries while students were in seclusion as well as significant psychological trauma resulting from students being in seclusion. Historically, a wide variety of injuries and deaths have occurred while students are in seclusion environments including suicide, electrocution, and self injury due to cutting, pounding, and head banging. Additionally students have been denied access to toilets, food, or water while in seclusion environments. Sometimes students have been secluded for long periods of time, even continuously while they are in school for weeks on end. Environments used for seclusion have lacked ventilation, heating or cooling, and adequate lighting. There has long been a concern that if seclusion is used, the environment is humane and as safe as possible and the student is monitored continuously while in the seclusion environment. However, these elements have not been in place in some schools.

### ***What are the standards for using seclusion?***

In most medical, psychiatric, and law enforcement applications, strict standards govern the use of seclusion. Hospitals and treatment centers which receive federal funds are governed by federal legislation regulating their use of both restraint and seclusion. Often accreditation

requirements exist from governing bodies such as the Joint Commission on Accreditation of Healthcare Organizations or other agencies such as the National Association of Psychiatric Treatment Centers for Children (Cribari, 1996) and the American Academy of Pediatrics (American Academy of Pediatrics, 1997). These requirements have resulted in widespread training and certification of staff in the medical and psychiatric programs which employ physical restraints or seclusion. Many of these programs have attempted to reduce drastically their use of restraints and seclusion as a result of the deaths and injuries related to their use and other problems already mentioned.

Unfortunately, there has been no such accreditation requirement from national professional organizations in education for the use of these procedures in schools. The lack of guidelines or accreditation standards in schools makes those who use seclusion more susceptible to misunderstanding, improper implementation, and abuse. Recent examinations of U.S. state policies or guidelines have found that a substantial numbers of states have no regulations or guidelines for the use of these procedures in school settings and that those states which do have some policies or guidelines vary tremendously in their content (Ryan, Peterson, & Rozalski, 2007). To make matters worse, school staff may lack training regarding effective behavioral interventions necessary for the prevention of emotional outbursts typically associated with children who have severe behavioral problems (Moses, 2000). Such interventions are critical in preventing student behavior from escalating to potentially dangerous levels where seclusion may be viewed as needed. As a result, federal legislation and state policies are being proposed which would restrict or eliminate the use of seclusion procedures in school settings.

### ***Why has the use of seclusion in education become an issue?***

Most important are the continuing significant psychological damage and the potential of physical injury and even death associated with the ongoing abusive and inappropriate use of seclusion in school settings. Additional concern has been raised that these procedures may violate basic human rights. There is little evidence of the effectiveness of seclusion as a behavior change strategy, depending on how it is used. As a result, awareness of the abuse of these procedures in school settings and concern by protection and advocacy organizations and parents are increasing.

In addition, a confluence of problems in the educational system may be contributing to the misuse of seclusion. Several factors have resulted in seclusion being thrust into the mainstream of public education. Many students with emotional or behavioral problems, regardless of disability label, are now being "included" in public school environments, frequently in regular schools and classes. These students often have a history of serious psychiatric and behavioral problems and need varying levels of supports for behavioral and academic difficulties. The use of procedures like seclusion has moved with these students to typical school and classroom settings and may be used more frequently in those settings than ever before, in part because these students are being served in environments where specialized supports are not well known and are not widely used. Teacher shortages and the movement to "generic" special education training for teachers may have resulted in school staff with limited or no training or experience with severe behavior disorders or the issues involved in employing seclusion procedures.

#### ***What does research say about the use of seclusion in schools?***

Very little research has been conducted on the use of seclusion in school settings. There is little research on the prevalence, appropriate applications, or efficacy of seclusion in school settings. Seclusion environments appear from anecdotal information to be widespread in schools and particularly so in special education programs for students with cognitive disorders and emotional or behavioral disorders. These reports indicate that seclusion is often used without the existence of dangerous behaviors which pose a risk of injury to the student or others. While there is some research regarding the use of time out from positive reinforcement, that procedure as noted earlier does not necessarily involve seclusion. We do not know how widely seclusion is used in schools, the extent or nature of injuries or deaths occurring when seclusion has been used in schools, its intended purposes when it is employed, or its effectiveness in achieving the desired outcomes.

No information about the environments where students are secluded is available. There is no information regarding how many seclusion environments meet commonly accepted safety standards. While professional guidelines indicate that seclusion and other forms of time out from positive reinforcement should be employed only briefly with students, there is no data about the length of time students are in seclusion when it is employed. Anecdotal evidence seems to

indicate that seclusion is often used for longer periods of time than would be necessary to achieve the stated goals.

## **Declaration of Principles**

Given the current situation related to the use of seclusion procedures in school settings, the Council for Children with Behavioral Disorders wishes to support a set of guiding principles which, if fully implemented, would significantly diminish the need to use seclusion in school settings. These principles are adapted in part from the Declaration of Principles by the Council of Parent Attorneys and Advocates (COPAA, 2008). To highlight their importance, they provide a preface to the recommendations CCBD is making on seclusion. CCBD supports the following principles as a preamble to its recommendations regarding seclusion.

### **Declaration of Principles**

- Behavioral interventions for children must promote the right of all children to be treated with dignity.
- All children should receive necessary educational and mental health supports and programming in a safe and least-restrictive environment.
- Positive and appropriate educational interventions and mental health supports should be provided routinely to all children who need them.
- Behavioral interventions should emphasize prevention and creating positive behavioral supports
- Schools should have adequate staffing levels to effectively provide positive supports to students and should be staffed with appropriately trained personnel.
- All staff in schools should have mandatory conflict de-escalation training, and conflict de-escalation techniques should be employed by all school staff to avoid and defuse crisis and conflict situations.
- All children whose pattern of behavior impedes their learning or the learning of others should receive appropriate educational assessment including Functional Behavioral Assessments and Behavioral Intervention Plans which incorporate appropriate positive behavioral interventions, including instruction in appropriate behavior and strategies to de-escalate their own behavior.

*For seclusion to be used effectively, it is essential that behavioral interventions which might prevent the need for seclusion are in place. Included among these should be a variety of positive behavior supports such as establishing and teaching behavioral expectations, recognizing and reinforcing positive behavior, providing mental health services and interventions, and relying on functional behavioral assessment and related intervention plans for any student whose behavior*



*indicates a need for intervention. Lack of resources to provide appropriate kinds of services should never be an excuse to employ seclusion. Without these positive behavior supports, the number of "emergency" situations which might require seclusion would be much greater than would otherwise be necessary.*

*Conflict de-escalation appears to be a crucial intervention needed to prevent the use of seclusion as well as useful generally to prevent and defuse behavior problems for students with emotional or behavioral disorders and for all students who may engage in power struggles or escalate emotional crises for other reasons. As a result, this is an area of training which should be provided to all educators and school staff members.*

## **Recommendations regarding “Seclusion” in School Settings**

Seclusion should be used only rarely in school settings. Seclusion should not be viewed exclusively as an issue related to special education. It is likely that exclusion is employed in school settings with some students who are not in special education. Therefore, regulation or guidelines and procedures should apply to all students, not just students with disabilities. The following are CCBBD recommendations related to the use of seclusion when employed in school settings.

- Staff who use seclusion procedures must have training in conflict prevention, the crisis cycle and interventions at each stage, possible effects of seclusion (e.g., physical well-being including medications and access to food, water, and restroom facilities), first aid and CPR, and any additional local or state regulations regarding the space and its use.
  - The training should be recurrent with annual updates at a minimum and appropriate to the type of school setting and to the age and developmental level of students and include information about commonly accepted standards for the use of seclusion in school settings.
    - If possible, the training should result in some form of certification or credential for each individual staff member and overall certification or credential for the school district, agency, or school.
  - The training should include information about mental health conditions and life experiences that may be exacerbated by seclusion procedures affecting the physical and mental well-being of the student during seclusion.
  - The training should include information about the effects of medications students may be receiving and how seclusion procedures might affect the physical well-being of the student during seclusion.
  - The training should include certification in First Aid and cardio pulmonary resuscitation (CPR) in the event of an emergency related to seclusion.

*If seclusion is to be used with students, it is critical that anyone using these procedures is carefully trained in all aspects of their use. However, unlike training related to physical restraint, there may not be specific training programs focusing on training related to seclusion. The conflict de-escalation training which is often found in training programs addressing restraint would be appropriate to training related to seclusion. However,*

*such training may be less common and therefore more difficult to obtain. Schools may need to develop their own training specific to the use of seclusion or seek outside sources for training. Nevertheless, such training should entail credentialing, recurrent training, and conflict de-escalation as components as well as commonly accepted standards for the use of this procedure.*

*It is less common for training to include the interactive effects of medications or other health issues with seclusion and how to monitor students for these issues during seclusion or to require First Aid or CPR training for those who receive instruction in the use of seclusion. We feel that, given the deaths or injuries associated with seclusion, this training should also be required for those trained to use seclusion.*

- Seclusion should never be used as a punishment, to force compliance, or as a substitute for appropriate educational support.

*The only legitimate rationale for the use of seclusion is to prevent injury or harm. Use of either seclusion as a punishment (in the common understanding of punishment) in school settings is inappropriate and should never be condoned. Since time-out from positive reinforcement can be employed without the use of seclusion, a limit on seclusion does not prevent the use of time-out from positive reinforcement as a behavior change strategy when employed correctly. Seclusion is not a teaching strategy.*

- Seclusion to control behavior should be used only under the following emergency circumstances and only if all three of these elements exist:
  - The student's actions pose a clear, present, and imminent physical danger to him/her or to others;
  - Less restrictive measures have not effectively de-escalated the risk of injury; and
  - The seclusion should last only as long as necessary to resolve the actual risk of danger or harm or while awaiting the arrival of law enforcement or crisis intervention personnel such as when the student has possessed a weapon or committed a crime.

*These three components define the circumstances for and limits of the use of seclusion.*

- Each of the three elements described above, with the names of those staff members involved and any other circumstances surrounding use of the seclusion, must be documented immediately after any use of seclusion with a copy placed in the student's record and provided to the parent.

- Parents or guardians should be informed as soon as possible after each and every instance of the use of seclusion and provided a copy of all documentation as soon as it is created.
- The program supervisor or administrator should be informed as soon as possible after each use of seclusion.

*Given the potential for the possibility of injury or death as well as the possibility of these procedures being abused, appropriate documentation of the use of seclusion is essential. Parents must be informed immediately for each and every use of seclusion with their child.*

- A staff de-briefing should occur as soon as possible after every incident of the use of seclusion but no later than 48 hours after the incident
  - This de-briefing should include all of the participants in a seclusion situation, an administrator, and at least one other staff member who was not involved in the seclusion procedure.
  - Parents or guardians should be invited to participate in this de-briefing.
  - The student should also be involved in the de-briefing as soon as he/she is able to participate.
  - The debriefing should focus on how this situation could have been handled in such a way as to prevent the need for the use of seclusion and how a similar event could be avoided in the future.
  - A report of the finding of this de-briefing should be included in the student's file with a copy sent to the parents or guardians.

*The components in these sections are needed to insure that information permitting evaluation of the use of these procedures is available and is communicated to appropriate administrators, parents, and others capable of providing oversight on their use.*

- All seclusion environments should be inspected at least annually by fire or safety inspectors and for programmatic implementation of detailed state or provincial regulations or guidelines with violations affecting school accreditation. Seclusion environments should:
  - Be of reasonable size permitting students to lie or sit down.
  - Have adequate ventilation including heat and air conditioning as appropriate.

- Have adequate lighting.
  - Be free of any potential or predictable safety hazards such as electrical outlets, equipment, and breakable glass.
  - Permit direct continuous visual and auditory monitoring of the student.
  - Permit automatic release of any locking device if fire or other emergency in the school exists.
- Any student in seclusion must be continuously observed by an adult both visually and aurally for the entire period of the seclusion. Occasional checks are not acceptable.
    - At the student request, the student must be permitted to go to the restroom.
    - Any signs of medical distress should result in immediate action.
    - The student should be permitted water to drink if requested.
  - Repeated use of seclusion for any one student or multiple seclusions across different students should be viewed as the failure of educational programming and the likelihood that supports, educational methodologies, and other interventions for the students are inadequate and should be modified.

*Since this is an emergency procedure and is used only if there is a threat of imminent physical danger to the student or others, a large number of "emergencies" is a clear sign that the normal educational or behavioral programming is failing and should be revised. For students in special education, this should trigger an IEP or PPP team review of the individual student's programs and placement as well as overall school evaluation of its behavior support plans.*

- Safety planning.
  - School wide or general safety plans or policies should clearly identify if seclusion might be employed in emergency situations within a school setting. These should be disseminated to parents of all students in that school.
  - Individualized safety plans for students with disabilities: Since the use of seclusion is an emergency procedure, it should not normally be incorporated as an educational intervention into student's Individual Educational Program (IEP) or a student's Behavior Intervention Plan (BIP). If the student's IEP team determines that the student's history and potential for dangerous behavior warrants a "safety"

or “emergency plan,” such a plan should be created for that student by the IEP team and must become part of the student’s IEP. Such plans may include seclusion procedures along with other procedures for use in a behavioral emergency with that student.

- Individualized safety plans for students without disabilities: For any student who is not in special education but for whom an individualized safety plan would be needed, a plan should be created according to procedures established within that setting.

*Individualized Education Plans (IEPs), Personal Program Plans (PPPs,) and Behavior Intervention Plans (BIPs) reflect plans for educational programming. Seclusion is regarded as an emergency procedure. As a result, a persuasive argument can be made that seclusion should not be included as normal interventions in students’ IEPs, PPPs, or BIPs. Such inclusion might legitimize seclusion as part of normal educational programming. Moreover, inclusion of seclusion procedures in a student’s IEP, PPP, or BIP may imply that it could be used routinely by educators and that the parent or guardian has provided consent or support for its use by signing the IEP or PPP. Neither of these should be the case.*

- *According to IDEA-04 an IEP must identify services which are designed to confer “meaningful education benefit.” The statute states also that the IEP should include “a statement of special education services and supplementary aids and services based on peer reviewed research.” Seclusion does not meet the standard of providing “meaningful educational benefit” nor is it based on “peer reviewed research.” It is only an emergency procedure.*
- *While having an individualized safety plan attached as a part of a student’s IEP for those students where safety issues can be anticipated is valuable, it is inadequate. A school which uses physical restraint will use these procedures in an emergency situation whether or not it is in that student’s IEP or PPP and will use it with students who may not have IEPs or PPPs.*
- *All parents should be informed regarding the possible use of seclusion as well as other emergency procedures which are in a school safety plan addressing procedures for dealing with life threatening emergencies. This might exist in a separate document, the school’s code of conduct, handbook, or in other sources of policy. These are routinely distributed to all parents and would reflect a more complete way of informing all parents about their use.*

*In addition, a separate individualized “Emergency” or “Safety Plan” document should be created in situations where the student truly presents a predictable risk for serious injury and where less restrictive de-escalation methods have consistently failed. Safety plans for students with disabilities must be created by the student’s IEP team and included as a part of the IEP or PPP.*

- *Parents must be involved and informed regarding any individualized safety plans. We would expect that these safety plans might be created in specialized school treatment settings and that such plans should be created only in situations where the student presents a heightened or predictable risk for serious injury. These safety or emergency plans should be developed and made part of an IEP or PPP for any student with a disability where the IEP/PPP team believes they are needed.*
  - *There is great value in talking to parents about the potential for the use of seclusion for those students who present high risks, such as those with behavioral challenges.*
  - *These safety plans should include all procedures and actions which might occur in various emergency situations and should never be limited only to seclusion.*
- All U.S. states and Canadian provinces which choose to use these procedures should have laws or strict regulations in place.
    - States or provinces which do not have specific regulations or guidelines should create them.
    - Regulations:
      - Should apply to all students, not just students eligible for special education.
      - Should apply to all schools, not just public schools.
      - Should provide specific definitions due to confusion over terminology for seclusion.
      - Should specifically identify how standards provided will be monitored at the state or provincial level (for example, inclusion in school accreditation procedures and monitoring) to include:
        - Reporting of accurate incident by incident data to an outside agency on a regular basis.
        - Identifying responsibility for assessing the accuracy of data provided by schools, analysis of data, and oversight and intervention if necessary when data indicates overuse or potential abuse of seclusion.

*Given the potential for death or injury as a result of these procedures and given the nature of the abuses of these procedures across the U.S. which have been identified in the media, it seems reasonable that any state, province, or school system which chooses to use these procedures should have a written policy in place. Such written policy will be*

*likely to ensure that both educators and policy makers are informed about the proper use of these procedures and their potential for misuse and the liability which might result.*

*According to recent U.S. court decisions, when there is a potential issue of child abuse in schools, state Advocacy and Protection agencies can request access to all school records of seclusion (and restraint) in that school district in order to investigate the possibility that abuse is occurring. Not having accurate records could itself be a partial basis for a finding against the school. It makes sense to have the state or provincial education agency provide oversight of this data much in the way that it now does for school discipline data.*

- In any school where seclusion is used a written set of policies should be in place, and the possibility of emergency use of seclusion procedures should be clear. Regarding these policies:
  - Any school district which employs seclusion procedures should have a written school-wide positive behavior support plan which includes the use of positive behavior interventions and de-escalation techniques, training of all school personnel on how to implement positive behavior supports, and documentation procedures.
  - District and school policies should be made known to all staff.
  - Compliance with district and school policies should be mandatory for all school staff with clear lines of responsibility and oversight identified.
  - District and school policies should be available to parents and the public.
  - The fact that seclusion might be used in school should be made known to all parents and students in school via the code of conduct, crisis or emergency procedures document, or other mechanisms for informing parents and the public about school policies.
  - These policies and related training should be a part of school-wide accreditation standards.
  - Senior administrators (i.e., the school principal or designee) must ensure the implementation of these policies.
  - This plan should be on file with the state or provincial education agency and available for review by parents and advocacy or parent organizations.



- A special education program which employs seclusion procedures should have a written positive behavior support plan specific to that program, pre-established emergency procedures, and data to support the implementation of the principles of positive behavior supports in that environment..
- Federal, state, and provincial legislation or regulation which would require the implementation of the recommendations above is necessary, and CCBD will support such legislation or regulation.
  - CCBD does not believe that “guidelines” or “technical assistance documents” are adequate to regulate the use of these procedures since abuses continue to occur in states where guidelines are in place and these guidelines have few mechanisms for providing oversight of abuses.
  - Legislation or regulation is necessary to insure adequate oversight.
  - In the absence of legislation or regulation, individual school districts or school programs should proceed to implement policies in accord with these recommendations.
- CCBD calls for additional research regarding the use of seclusion with students across all settings. Areas for future research include:
  - The extent to which schools currently employ seclusion and, if so, where and how it is used;
  - Detailed information about the environments used for seclusion;
  - The nature of the antecedents or behavior that precipitate seclusion;
  - The Diagnostic and Statistical Manual diagnoses (American Psychiatric Association, 2002), special education category (if applicable), or other characteristics of students who receive seclusion;
  - The intended purposes or goals of seclusion;
  - The efficacy of seclusion in achieving these goals;
  - The potential outcomes or side effects including injuries and fatalities as a result of the use of seclusion in schools;
  - The training level of the staff who employ seclusion; and

- The degree to which procedures for de-escalation of student behavior and positive behavior supports are used before, during, and after seclusion.

*At the present time there is virtually no data about the use of these procedures in public school settings. Research about these procedures is needed and would permit better understanding of both negative and positive outcomes of the use of seclusion procedures.*

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*Christini Stagge*

2/18/10 –

I wish to speak in favor of this bill.

My son, Michael Stagge, has autism and is nonverbal. At the age of 20, his school placement was in a segregated "special needs" school, 45 minutes from home. I was strongly opposed to this placement, which had happened for the last 3 months of the previous school year.

This was not a place of learning for my son. There was a "quiet room" across the hall from his assigned classroom. A regular sized classroom that was used for "breaks", There were some tables, chairs, a swing, and a mat on the floor /against a wall, with weighted blankets and pillows. The quiet room became home base for my son, as no teaching was going on, no attention paid. Staff did not know how/what to teach so they did nothing. I came to find that Mike was spending his day lying on the mat.

One afternoon, as I was expecting Mike's bus I received a call from the school nurse. Mike had been "upset that afternoon, and after he had left school, they noticed blood in the quiet room, so I should check him when he got home.

I asked questions and received little information. Mike had been upset for the last hour or so, he was in the quiet room, by himself, yelling and crying. What actually happened? How was he hurt? They did not know. What started with one person outside of the door/in the hall, became 2 and then 3, but no one went in. I could not determine if he tried to leave and was prevented. No one would say. The door had just a narrow window, and the area where Mike would typically lay on the mat, he could not be seen from the hall.

When his bus arrived at school, they opened the door, told him it was time to leave. He dutifully got his belongings and left. When he arrived home, I entered the bus, and Mike was exhausted, looked at me and pointed to his head, I removed his knit hat to find a bloody gash at the crown of his head. I took Mike to urgent care where he received 7 stitches to close the wound.

The brief information that I received from the nurse that afternoon is all I would get. School would not talk about how, why this happened, the same from his home district, no accountability. The only additional information that I would come to hear – it was thought that Mike's injury came from the chalk rail that runs the length of the area just above the mat and pillows. Some time later, they covered the chalk rail with padding.



I never wanted my son in this placement, fought against it and lost. I tried to have hope, that maybe it would be ok, that perhaps these people would see the neat kid that my son was, treat him with kindness and respect, and positively support him in his challenges.

I was not at the school that day, I don't know what upset Mike. During the time that he was alone in that room – was he injured early on and then yelling and crying, in need of assistance that never came? OR was an initial upset made worse by lack of attention to his needs, causing him to escalate and incur injury? I will never know.

I was not there at school to help Mike that day, not a part of what happened, and yet I live with such guilt and grief over what happened to him.

What could have been different? If this bill was in effect, staff would have been trained in positive behavior supports, there would have been thorough documentation of event, duration and the names of staff involved. My son's injury could have been prevented or if any injury occurred, it could be treated immediately and without delay.

I trusted that while at school, staff would pay attention to him, teach him, supervise him and keep him safe. That is their job, that is what is right to do. But people don't always do what is right, and sometimes just do what is easy. Doing what is right and in the best interest of a student, should be mandatory – should be the law. Please support Senate Bill 468.

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